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# The Solicitors' Journal

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# The Solicitors' Journal

(ESTABLISHED 1857.)

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## Current Topics.

### The New Silks.

THAT HOPE springs eternal in the professional, as in the lay, breast is evidenced by the announcement of a fresh batch of silks who have not been deterred by the slump in litigation from taking the decisive step of moving into the front row as competitors of the already large number of leaders. One of the new King's Counsel, Sir HERBERT WILLIAM MALKIN, it is true, is not in actual practice, as he holds the responsible post of legal adviser to the Foreign Office; but all the other members in the list are in practice; Mr. INMAN has specialised for many years in building and cognate cases; Mr. TRAPNELL is a busy junior both in London and on the Western Circuit; Mr. BUCKNILL practises in the Admiralty Court; Mr. TURNER is an authority on all branches of local government law; Mr. DAYNES is the sole representative of the Chancery Bar; Mr. KIRKHOUSE JENKINS, Mr. HOWEL WALTER SAMUEL, Mr. ENTWISTLE and Mr. EARENGEY have each enjoyed a good practice, both in London and on their circuits, Mr. EARENGEY being also Recorder of Tewkesbury. Perhaps, however, the most striking feature of the list is the inclusion of an Indian barrister—Mr. BHUGWANDIN DUBE—who practises in the Privy Council. Already he has received the congratulations of Lord MACMILLAN at a sitting of the Judicial Committee, but was the learned Law Lord not mistaken in thinking that Mr. DUBE was the first practising Indian barrister to attain the distinction? We find that the late Lord SINHA, whose early death robbed the Privy Council of a very distinguished member, was made a King's Counsel in 1918.

### A Testator's Gift for Disabled German Soldiers.

THE COMING before the House of Commons for its second reading of the Wills and Intestacies (Family Maintenance) Bill will give perhaps more than a passing interest to the case of *In re Robinson: Besant* v. *The German Reich and Others, The Times*, 14th inst. By the Bill it is sought to make invalid what a number of persons think unjust, namely, the total disinheriting by spouses of one another and their children; by two of the parties to the summons it was sought to obtain from the court a declaration that a gift of residue in the will of the testator "to the German Government for the time being for the benefit of its soldiers disabled in the late war" was invalid. One of these two parties was General SMUTS, to whom the testator, in the event of the gift to the German Government being void, gave his residue on trust, after taking £1,000 for himself, "for the benefit of disabled Boers who have suffered through the South African War," and for whom it was argued that the gift to the German Government was contrary to public policy; the other was a half-brother of the testator, for whom it was argued that both the gift to the German Government and that to General SMUTS were bad. MAUGHAM, J., would hear nothing of contrariety to public policy, and effectively countered the suggestion that to help disabled German soldiers would be to encourage Germany again to attack England with the analogous (and ridiculous) argument that to assist discharged prisoners is to promote crime. And he was equally unsympathetic with an argument which sought so to aggrandise his own judicial powers as to disable him from permitting the fund in question to go out of the jurisdiction. The testator's intentions, it was said, could not be carried out without a scheme; and the court, as it could not settle a scheme for Germany (a foreign country) could not allow the fund to go there. But the argument for the Attorney-General prevailed, which was that the presence or absence of a scheme was of no moment, the *sine qua non* being a trustee who could and would act; and, as the German Government intimated its willingness to take the money and apply it as the testator had indicated, MAUGHAM, J., with the observation that he saw "no difficulty in the trusts being carried out in all respects" ordered that the money be handed over, through the proper officer, to that Government. The decision is an illustrious example of the scrupulous fairness of English law and justice. Perhaps it is not too much to hope that those who, by the Wills and Intestacies (Family Maintenance) Bill or any other means, would restrict the right of testamentary disposition in England, will pause to reflect, in the light of *In re Robinson*, that there may very often be good reasons for wills drawn in terms which *prima facie* work glaring injustice.

### Auctioneers' Armorial Bearings.

OUR FRIENDS the auctioneers have obtained for their incorporated society a grant of armorial bearings, a picture of which appeared recently in *The Daily Telegraph*. Within the shield may be seen a sheaf of wheat, typifying the agricultural interests of the craft, whilst beneath is a "T" square and rule, indicative presumably of the practice of surveying. There is also an auctioneer's "gavel"—the mallet or hammer with which the auctioneer holds sway on the rostrum. Supporting these insignia are an ancient Briton and an ancient Roman—the former with a club on his shoulder, the latter with a scroll in his hand. We think there may have been

auctioneers in ancient Rome, but whether they functioned in Britain in druidical times is not recorded. If they did, the club was doubtless the natural precursor of the mallet. The motto, "Fortiter, Fideliter, Feliciter" is quite appropriate, and we feel sure will be loyally accepted and acted upon. Incidentally the word "gavel" which is the official description of the hammer or mallet, is mixed up in its derivation with the "gavelling" or dividing up of land ("gavelkind" in Kent). Reference to the English Dictionary will show quite an interesting history of the word.

### Involuntary Bailees.

THERE HAVE been several letters in *The Times* recently from readers complaining that goods of various kinds, chiefly stationery, have been sent to them without having been ordered, and when payment has not been made threats of proceedings have been used. What is the position in law in those circumstances? Under the Sale of Goods Act, where goods are delivered to a buyer, that is, a person who has ordered them, and he rightfully refuses to accept them as not conforming to contract, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them. *A fortiori* there is no obligation on a person to whom, without request by him, goods have been sent, to return them to the sender; if the sender, the would-be seller, wants them back it is for him to call or send for them. Some years ago an attempt was made to impose legal liability upon the recipient of a manuscript play who had not asked for it, and who was unable to find it when after an interval it was demanded back by the author, but, as might be expected, the attempt failed, the court saying that liability cannot be imposed upon an involuntary bailee, unless, of course, that person, by accepting the goods or article offered, has changed his status from an involuntary to a voluntary bailee. The point is of some importance in the newspaper world where articles are continually being offered ultroneously. In no respect does the offer of such contributions differ from the offer of any other kind of wares. Out of abundant but really superfluous caution most journals state that the editor will not be responsible for the return of manuscripts which are not considered suitable for his columns.

### Doctor Johnson on "Ecclesiastical Patronage."

THE RECENT discussion in the Church Assembly, and particularly the vigorous denunciation by the Bishop of Durham of "patronage trusts," serve to recall what Dr. SAMUEL JOHNSON, the great lexicographer, had to say about the origin of private patronage. JOHNSON, as is well known, was a devout churchman. "Public worship," he told BOSWELL "required a public place; and the proprietors of lands as they were converted, built churches for their families and their vassals. For the maintenance of ministers they settled a certain portion of their lands; and a district through which each minister was required to extend his care, was, by that circumscription, constituted a parish. The churches which the proprietors of lands had thus built and thus endowed, they justly thought themselves entitled to provide with ministers; and where the episcopal government prevails the Bishop has no power to reject a man nominated by the patron, but for some crime that might exclude him from the priesthood: for, the endowment of the church being the gift of the landlord, he was consequently at liberty to give it according to his choice to any man capable of performing the holy offices. The people did not choose him because the people did not pay him." To-day we have many churches built and maintained not by individuals, but by congregations. There, of course, the case is different; and as, moreover, very few churches erected by private landowners are now maintained except by their congregations, the patronage question has assumed quite a different aspect. None the less it is always interesting to recall the perfectly reasonable and proper origin of customs which are being gradually abolished in these modern days.

### Rationalisation in Religion.

THE SPIRITUAL welfare of localities, as well as practical convenience, demands the re-grouping of small parishes, as shown by two recent decisions of the Privy Council. In the case of *In re the Benefices of Flixton and South Elmham*, the Ecclesiastical Commissioners proposed (*a*) to join two benefices, and so release one incumbent for service elsewhere; (*b*) to unite the joint income, and so enable the bishop to transfer a portion to poor parishes. The tithe payers and parishioners objected that (*a*) the union of benefices would not conduce to the spiritual welfare of the localities; (*b*) it was inequitable to take the money of one parish for the benefit of another; (*c*) one parish would be deprived of its resident clergyman. The scheme was upheld by the Lord Chancellor and Lords BLANESBURGH and TOMLIN, who held that the re-grouping was in the interests of the church at large. In the case of *In re the Benefices of Winston and Pettaugh*, a public enquiry had been held (on a commission issued under the Union of Benefices Measure, 1923, s. 2) and a scheme for union was propounded. An appeal was lodged by the Wrekin College Wellington Company Limited (the patron of the benefice of Pettaugh) on the grounds that (*a*) the commissioners were not unanimous in their proposal; (*b*) the patronage would be exercised by the Dean and Chapter of Ely, and there was no guarantee that any regard would be had to the traditions and sentiment of the parish, which had been Protestant and Evangelical since the Reformation; (*c*) although the population was small, the church services and Sunday School were well attended. The appeal was dismissed by Lords BLANESBURGH and TOMLIN, and Sir LANCELOT SANDERSON, who upheld the scheme of the Commissioners. Compare a "Current Topic" under the above title in our issue of the 31st August, 1929, 73 SOL. J., 559.

### Law and Letters.

IN AN address, full of charm and phrased with an exquisite felicity, which LORD MACMILLAN delivered to the American Bar Association at their meeting in Chicago last autumn, and which is now accessible to English readers in the pages of the current number of the *Juridical Review*, stress is laid upon the obligation incumbent upon the lawyer as a member of a learned profession to cultivate an intimate acquaintance with the well of English undefiled in the classics of our noble language. As LORD MACMILLAN says, "there is no reason why legal arguments or judicial judgments should not be expressed in good English. There is every reason why they should. The advocate who can impart a literary flavour to his address adds to its persuasiveness and attraction." This is a very different attitude from that adopted by one of the Lords of Session in former days of whom BOSWELL tells us in his "Life of Dr. Johnson." It seems that BOSWELL had taken literary counsel with the doctor while preparing a written argument to be laid before the Court of Session, but all the trouble he had incurred would appear to have been thrown away so far as this particular judge was concerned, as he subsequently told BOSWELL that he need take no pains in the preparation of such papers for it was merely a case of "casting pearls before swine." No doubt the remark was made jocosely, but it was scarcely in its form complimentary to the intellectual equipment of the members of the Bench. Needless to say, LORD MACMILLAN, who has a hereditary love of letters and has himself the pen of a ready writer, will have none of this. In his view it is essential that the lawyer, if he is to attain efficiency in his calling "should be steeped in literature, and keep his mind constantly refreshed and renewed by contact with the great thinkers of the past." No better counsel than this can be given to him who is entering the profession, and well will it be if to it he gives heed.

# Criminal Law and Practice.

CAPITAL PUNISHMENT.—A London paper recently reported "a terrible judicial error" that had just been revealed in Saxony. Forty years ago a youth was convicted of the murder of a woman and sentenced to hard labour for life; now the real murderer has confessed and the unfortunate youth of forty years ago, now a grey-haired man, has been released.

We quote this for just what it is worth, no more and no less, in the controversy still going on with regard to the death penalty. We desire to record evidence on either one side or the other, impartially. This instance should at least give food for re-consideration to those comfortable people who aver that no-one is ever wrongly executed; what happened in Germany might happen in England, and might result in a death penalty.

Such cases are very rare. Some people think that it is necessary, in the interests of society as a whole, to take the small risk. Others, thinking even a rare fatal mistake of this kind at long intervals can in no wise be justified, range themselves alongside Lafayette and Lord Shaw of Dunfermline, holding that man not being infallible should not assume the power of such an irrevocable doom.

AMPLIFICATION OF POLICE NOTES.—In this column of our issue of the 24th January we referred to some comments made by His Honour Judge Clements, sitting at the Canterbury County Court, arising out of the evidence of a police sergeant, who produced a book containing a report of statements said to have been made to him by a party to the action before the court, which statements differed from the report issued by the chief constable to the solicitors concerned in the case. We said that, without seeing the notebook and the report, it was not possible independently to judge how far his honour's strictures were deserved, and we made some general observations regarding the difficulties of a police officer called upon to make notes on the spot in certain cases. The whole matter, which is of some importance, is now made plain from a report of further comments made by the learned judge at a subsequent sitting of the court. We have before us a copy of "The Kent Herald," for the 4th instant, from which it appears that, after a reference to what had taken place at the hearing of the case in question, his honour said: "I requested the learned registrar to communicate with the chief constable and I had the assurance that the sergeant stated that which was inaccurate. The sergeant stated that he had been instructed—that instructions had been issued to the force—that statements made by persons might be enlarged and added to. The chief constable assures me that no such instructions have ever been issued to this force and that the sergeant was under a misapprehension as to the report to which his attention was called. I need not go into any details except to say this, that I am satisfied beyond all sort of doubt that the sergeant was under a misapprehension. But there remains the fact that his report—the report from the police station—did differ from the statement contained in the sergeant's book and by the use of inverted commas persons reading the report would naturally assume that those were the words used by the witness to the police officer. It appeared that they were not so and it appears that the officer, as I understand it, gives another report in which he can express his opinion or give other information for his superiors which would be, I suppose, hearsay evidence, and therefore not contained in the official report sent out to the solicitors. The sergeant seems to have confused the two reports." His honour proceeded to pay a tribute to the evidence given before him by police officers in accident cases. "Without a single exception," he said, "the evidence given by the police is given with absolute fairness with no desire to favour one side or the other and with the object of assisting the court to a proper conclusion in every case." The learned judge concluded by saying, "However the chief constable has given me his assurance and I am very glad indeed to have it, that he is issuing instructions that the statements made and entered into the pocket-books of his officers are to be strictly adhered to in the official report, and that the personal opinion of the police officers is for the information of the chief constable only and not to be supplied to advocates and insurance companies unless the accident was actually witnessed by the officer himself. I am sure that those instructions will in the future be observed and being observed, there will be in the future no further such confusion or misapprehension as there has been in the past." So in Canterbury, at any rate, everything seems to be as it should be in these respects and the learned county court judge has done a public service in calling attention to a matter of no little importance to litigants in accident cases and with respect to the duties of the police in making reports.

THE ACCURACY OF COURT PROCESS.—A question was put in Parliament on the 29th January by an Honourable Member who was concerned because a prisoner who had been sentenced to twelve months' imprisonment had been released at the expiry of six (less of course the partial remission authorised by prison rules for good conduct). The premature release was due to inaccurate warrants of commitment. The sentence was to two consecutive terms of six months each, but, by oversight at the police court concerned, no direction that one term was to commence at the expiration of the other appeared on the warrants of commitment. The governor, in the absence of this direction, properly treated the two terms as concurrent. The questioner wanted some "means of checking the warrants sent to the governors, so that the decisions of the courts may be correctly communicated to the governors." He was told that the "isolated instance would not justify any elaborate procedure." After a supplementary question, "Is the Right Honourable Gentleman satisfied that it is an isolated instance?" which the Speaker checked by saying: "These questions are becoming a debate," the matter dropped. But there is surely a misunderstanding of the position. In every well-regulated police court throughout the country, and if there be any others they had better follow suit, there is an "elaborate procedure," to secure correctness. When the sentence is pronounced the clerk in court notes it, and the note is acted upon by the subordinate official who prepares the warrant. The warrant is later compared by the court clerk with the register in which the decisions of the magistrates have been formally recorded. Any discrepancy between the warrant and the register, or between the latter and the clerk's note, is then, ordinarily, observed, and put right. In addition, it is to be presumed the justices themselves look at the warrant before they sign it, and though lay justices may not be competent to check the technical recital of the offence, they can hardly fail to observe, indeed they ought not to fail to notice, whether the sentence is in accordance with their pronouncement or not. But no man is perfect, and even "elaborate" safeguards and "precautions" sometimes fail. To suggest there are anything like frequent errors is to speak without knowledge. Honourable Members, hot on the scent of irregularities, are apt to make rather extravagant suggestions in the hasty supplementaries put to elicit further information from ministers resolved to say as little as possible. Then these questions tend to become a debate, and no one gets any further or becomes any wiser.

## LORD DARLING.

On Thursday last, owing to the absence of judges on circuit and to the consequent congested state of the lists in London, Lord Darling sat as an additional judge of the King's Bench Division and occupied his old court, King's Bench Court IV. Lord Darling, who is eighty-one, retired from his position as a judge of the High Court in 1923, and this is the second occasion that he has returned to assist in the work of the King's Bench Division.

## Miss Rathbone's Bill.

THE subject of disinheritance, using the word in the popular sense of a testator's power to leave his estate away from his widow and family, is recurrent. The Englishman of to-day has almost the fullest liberty possible to a testator—overlooking, of course, the compulsory portion of the Chancellor of the Exchequer for the time being to the half or more of a large estate. Our readers may remember that we dealt somewhat fully with the matter a few years ago in an article "Inalienable Family Rights in Property," 70 SOL. J., 236, and a subsequent motion by Lord ASTOR in the House of Lords on the same subject was discussed: 72 SOL. J., 308. Lord ASTOR appears to have inclined to the New Zealand solution of the problem, by judicial interference with a will deemed unjust on the lines laid down in *Allardice* v. *Allardice*, [1911] A.C. 730. Miss RATHBONE has now brought in a Bill based rather on the Scottish and Continental systems of the fixed inalienable provision than on the more elastic one of that decreed by a judge. On the other hand, the system of New Zealand and some of the Australian States places a somewhat onerous responsibility on the court.

The sharp distinction between the scheme set up by Miss RATHBONE'S Bill and those of Scotland, France, Germany, etc., lies in the provision for the children. The ordinary rule, where one exists, is that children are bound to take an aliquot share of a parent's estate, perhaps up to two-thirds of its value, if there are several of them. Miss RATHBONE rather bases the burden she would place on the parent's estate on the model of the law applicable to him during his lifetime in respect of his infant children, compelling him, indirectly, it is true, but effectively, to maintain able-bodied children until the age of sixteen years, and those unable to earn their livings during the joint lives of parent and child. This obligation is one normally discharged out of income. Miss RATHBONE proposes to continue a similar obligation as a charge on income for the maintenance, education or benefit of any child surviving the testator until "the defined age," which in the normal case is the age attained at the expiration of two years after ceasing to receive full-time education, or the age of twenty-three years, whichever first occurs. If a child is physically unable to support himself or herself, the charge on income continues until that disability ceases.

The compulsory portion for a surviving spouse is in the more usual form of a life interest, ceasing on re-marriage, but there is also a provision that that spouse shall take half the value of the personal chattels and half the value of the net estate other than the chattels up to £1,000. Of the surplus, the income of half goes to the surviving spouse if there are no children, or the children are above the defined age. If there is no surviving spouse the children under the defined age take half the income. If spouse and also children under the defined age survive the testator, two-thirds of the income is to be set aside, one such third for the spouse and the other for the children. As an upper limit, the spouse whose income is made up to £2,000 ceases to have further rights under the Bill, and the same applies to any child with £300 a year. The Bill contains the necessary machinery for enforcing these directions, and the further obvious provision that benefits conferred by the will or any partial intestacy must be taken *pro tanto* in satisfaction of those conferred by the Bill. By cl. 6, one prospectively entitled to benefits may, by the leave of the court, contract out of them for valuable consideration. By cl. 9 a court, upon application within twelve months of the death of a testator, may annul any settlement made by him made with the intention of defeating the rights conferred by the Bill. The court may also annul the right of a surviving spouse in certain cases of separation, or of any beneficiary so long as he or she is maintained in a prison, asylum, etc.

The whole comprises a scheme of some elaboration, and the comment may be made that in the ordinary case a widow or widower would enjoy reasonably ample provision under it. Children, on the other hand, when in a position to earn their livings, have no rights under the Bill. In arriving at her "defined age" Miss RATHBONE has sought to grapple with the difficulty caused by the fact that her Bill is framed to apply alike to the working classes and others whose children prolong their education up to full age and even beyond. The undergraduate who may under the Bill receive £300 a year for his university allowance until he is twenty-three may perhaps complain that he is placed in a very precarious position, being allowed to form the habits attendant on such an income, with the considerable likelihood that he may be out of work directly afterwards, and so rather worse off than he would have been as a bricklayer or bargee. "The defined age," is, in effect, an elastic one, largely depending on the discretion of the surviving parent or guardian if the child is still an infant, and the possible cesser of benefit before an income adequate for support can be earned will merit the careful consideration of Parliament. Incidentally, members might glance at the German code and consider the provisions for depriving either spouse or child of their prospective rights under the Bill for misconduct, or ill-treatment of the testator. At present there is no provision for the avoidance of such benefit, even if the person claiming it has murdered the testator. Possibly that would be implied, but it is extremely doubtful. It is doubtful whether it would be implied in the case of attempted murder.

Clause 7 (1) (*d*) provides that the spouse's provision may be annulled by the court if the parties had been living apart for two years or more before the testator's death. This would cover the case of a testatrix who was driven from her home by her husband's cruelty, or a testator who left it to avoid the burden of living with an habitual drunkard, in either case without having obtained the order of the court. Presumably in such circumstances the court would hear the surviving spouse and could refuse to make the order, but it might be fairer to place the burden of proof that circumstances did not warrant the surviving spouse taking the benefit of the Act, on the residuary legatee seeking to deprive him or her of it.

Comment may also be made that the provision against voluntary settlements hardly seems strong enough. That which protects the Chancellor of the Exchequer against them may be regarded as adequate, and could easily be adapted by reference.

One suggestion may be made if the Bill goes so far, and that is that, as between a testator and persons who pay rates after his death, the burden of the sustenance of his family falls more appropriately on the former than on the latter. If a disabling accident or illness happened to a child just under the defined age, the testator's estate would continue liable for his maintenance, but if the accident occurred just over that age, the burden would fall on the ratepayers. A similar criticism may be made of the release of the estate if the surviving spouse or a child is in a prison, asylum, or other institution. To meet it, however, the estate would have to remain charged or chargeable during the lifetimes of all the children, which would considerably enlarge the scheme.

## Sick and Provident Funds for Employees.

IN an article which appeared in a previous issue of THE SOLICITORS' JOURNAL, the legal questions involved in the setting up by a firm of a fund for providing retirement pensions for employees were examined in some detail. It is proposed in this and a succeeding article to deal with the points which call for the attention of a firm's legal advisers when made responsible for the proper constitution of one of those funds—now becoming increasingly common—the object of which is

to assure sickness and distress allowances to employees or to provide them with favourable means of long or short term saving. Before proceeding with this subject it is worth while calling attention to two further points in connexion with firms' pension funds, namely (*a*) the change in the law as to pensions for employees' widows, and (*b*) stamping. (*a*) Under s. 32, Finance Act, 1921, exemption from income-tax was accorded to pension funds approved under the conditions therein laid down; no exemption was, however, allowed in respect of any part of such funds applicable to the provision of pensions and benefits to the widows and orphans of the members of those funds. By s. 19, Finance Act, 1930, this was amended, and power was given to the Inland Revenue authorities to grant approval to funds for the provision of annuities for the widows, children or dependents of the deceased members of such funds. Thus widows' and orphans' funds established by firms, and those sections of firms' pension funds which make provision for widows and orphans are no longer excluded by statute from approval. (*b*) As a general rule a pension or superannuation fund should attract the 10s. deed stamp. In these funds it can only be by way of exception that it is desired to make a reservation from the power of the trustees to apply the whole capital as well as income in the provision of benefits and so attract the *ad valorem* settlement duty. Nor in general does the instrument become chargeable with *ad valorem* bond or covenant duty, since the regular annual contributions which the firm binds itself to pay, while doubtless the scale is ascertained, are not themselves ascertained sums. As to the initial contribution of an ascertained amount which the firm is usually called upon to pay in order to supplement the pensions of those employees who have considerable back service to their credit at the outset of the scheme, this can be kept outside the provisions of the deed (it may, if necessary, be referred to in the recitals). Where, however, the initial contribution is of such magnitude that the employer finds it convenient to spread the payment over a period (a method which does not preclude the contribution from the tax exemption allowed under s. 32, Finance Act, 1921), it would appear that it would be difficult to resist a claim for the *ad valorem* bond or covenant duty so far as the initial contribution of ascertained amount is concerned.

We now pass on to consider works' sick funds. First, will it be necessary to register such a fund? In the vast majority of cases, no. In deciding the point, three factors have as a rule to be taken into consideration:

(*a*) taxation of the investment income;
(*b*) the provision as to recipients of death benefits;
(*c*) the method of admitting members.

(*a*) Registration of the fund as an industrial and provident society would secure exemption of the income from tax (Income Tax Act, 1918, s. 39 (4)). Registration of the fund as a friendly society would have the same effect, although to be so registered the fund must be precluded by its rules from assuring to a member a lump sum payment exceeding £300, or an annuity of a value exceeding £52 (*ibid.*, s. 39 (1); s. 41, Friendly Societies Act, 1896, as amended by s. 3, Friendly Societies Act, 1908). But without registration the fund has the legal status of an unregistered friendly society, and its income is in consequence exempt from tax so long as it does not exceed £160 (Income Tax Act, 1918, s. 39 (1)). Since it can only happen in very exceptional cases that the income of a fund of this kind, having regard to the continuous nature of the disbursements it is called upon to make, would exceed £160, the need for registration on this ground hardly ever arises, if at all.

(*b*) Death benefits are often assured to the members by funds of this description, and a demand is often expressed for a power to the members to nominate the persons to receive the moneys payable. Registration as a friendly society has the effect of legalising such a power (Friendly Societies Act, 1896, s. 56). But although an unregistered fund is debarred from including such a provision in its rules, it may go some way to meet the wishes of its members by employing the method of specifying the persons entitled to receive the death benefit and prescribing their order of priority. In such a case the money payable out of the fund does not, as against an adverse claim from, say, an administrator, form "the property of the member in the sense of its belonging to him absolutely in his lifetime; he has no right to it but such as the rules give him. If he chooses to bequeath it by will, it will be assets; but if he does not choose to exercise that power, the committee and not the member will determine which of his relations will get the allowance" (*Ashby* v. *Costin* (1888), 21 Q.B.D. 401, and *cf. Re Davies* [1892] 3 Ch. 69).

(*c*) It is sometimes desired to make membership of the fund compulsory on the employees or on some specified class of them. If so, the provisions of the Shop Clubs Act, 1902, have to be borne in mind, it being laid down by that enactment (s. 2) that "it shall be an offence . . . if an employer shall make it a condition of employment that any workman shall join a shop club or thrift fund, unless the shop club or thrift fund is registered under the Friendly Societies Act, 1896, . . . and certified under this Act by the Registrar of Friendly Societies." The meaning of "shop club" or "thrift fund" is "every club and society for providing benefits to workmen in connexion with a workshop, factory, dock, shop or warehouse." (*Ibid.*, s. 7.) But here again it is rarely if ever found necessary to register a fund to which these provisions apply merely for the sake of ensuring that the employees in question shall join the fund, as the matter can almost always be settled by agreement between the employer and the employees concerned. In this connexion it should be noted that the usual method of paying contributions is that of deduction by the employer of the amount from the wages as paid (other methods like that of shop collections are rightly discouraged). Provision should therefore be made for this in the rules by laying it down that each member shall give the employer a written authorisation of the deduction in order to comply with the provisions of ss. 23 and 24 of the Truck Act, 1831 (*Hewlett* v. *Allan* [1894] A.C. 383; *Phillips* v. *London School Board* [1898] 2 Q.B. 447). And the employer is thereby bound to pay the money over to the fund and not merely credit it to the member in the firm's books (*Ex parte Cooper* (1884), 26 Ch. D. 693).

(*To be continued.*)

## These Cruelty Cases.

CRUELTY, whether to human beings or to animals or birds, is one of those particularly objectionable offences surely calculated to infuriate even the most placid-tempered individual. "Like every other vice," said GEORGE ELIOT, "cruelty requires no motive outside itself; it only requires opportunity." And, unhappily unavoidably, opportunities seem never long wanting, so that cases of cruelty of different types and degrees crop up before the courts with almost alarming frequency. Indeed, the last quarter of 1930 appears to have been exceptionally prolific in this respect. It would, perhaps, be unnecessarily and unpleasantly monotonous, as well as undesirable, to detail at length many of the most revolting instances; but to direct attention to some of even the milder cases may serve to illustrate how really cruel cruelty can be, and to indicate the vital importance of dealing more adequately with proved offenders. How often do we hear of the husband whose infantile refusal to speak to his wife, even though living in the same house, has driven her to seek a separation order? In one recent case the absurd silence had lasted for two years, while in New York it was alleged not long ago that a silence of five months after a quarrel had so preyed on the wife's nerves that she had stabbed her husband to death. From this inactive type of

cruelty it does not seem a far cry to actual physical violence. One sad case, not perhaps without an element of humour, again comes from America: a wife petitioning for divorce said that her husband had the astonishing habit of beating her on every wedding anniversary to mark the date; being married in 1927, she has had three beatings. From nearer home comes a bitter-sweet story. "My husband," said a wife, "has been cruel to me all my married life, but I only left him this week, for I have been waiting until my children were old enough to protect me." "How old are they now?" asked the magistrate. The wife: "John is seven and Joan is five, sir." On the treatment of women the following somewhat eulogistic passage from the judgment of *Manby* v. *Scott* (1672) is interesting: "If such cruelty shall be sanctioned, and wives shall not be allowed necessaries, England will lose the happy reputation in all foreign kingdoms, which her inhabitants have achieved by their respect for this sex, the most excelling in beauty, which, as in this climate it far transcends that of the women in all other lands, so has this kingdom surpassed all other countries in its tenderness and consideration for their welfare." Women, however, can be cruel too, as witness the one who was recently sent to gaol for three months after it was alleged that one of her children had lumps on her head said to have been caused by a chair and the back of a hatchet.

Cases of cruelty to animals are, of course, the most frequent. In one case, a cat, which was placed in a hutch with five ferrets, was devoured—a fine of £5 was imposed on the owner. A woman who left two cats behind her uncared for on leaving a district had to pay 10s. 6d. Action in that case was taken by that excellent body, the Royal Society for the Prevention of Cruel to Animals, in order to bring to the notice of the public the cruelty of leaving animals behind in such circumstances. In this connexion it is interesting to note that in another R.S.P.C.A. prosecution it was stated that: "The problem of the deserted cat has reached an extraordinary magnitude in London. One cats' home in London takes in 50,000 cats a year which are abandoned in the streets." Dogs, perhaps even more than cats, suffer at the hands of some callous humans. One poor Alsatian puppy sent by train by a dog breeder arrived at its destination in so weak and emaciated a condition that it could hardly walk, and it had to be destroyed. The sender was sentenced to a month's imprisonment in the second division, the magistrate, Mr. BARRINGTON WARD, K.C., saying that the trade in animals by persons who thought only of the profits they made and nothing about the welfare of the creatures must be stamped out. The same magistrate was equally emphatic on another occasion on the question of cruelty to animals generally. When sentencing a young man to two months' hard labour for ill-treating two horses by working them in an unfit state, he said: "So far as cruelty to animals is concerned, no one is going to get away with it here. I am absolutely determined to stop it, no matter who the people are. Unless there are exceptional circumstances they will go to prison every time." Imprisonment in this class of case, in fact, ought to be the rule, not the exception that it is. A comparatively paltry fine will never go far towards reducing this all too prevalent evil. There have been numerous other cases, apart from those referred to, which have occurred in the last two or three months, and the frequent magisterial condemnation in such expressions as "an extraordinary wicked act," "a dastardly act," or "an abominable act of cruelty," finds ready endorsement by the general public. To make the punishment fit the crime, literally, might be a drastic remedy, but its effectiveness would be beyond dispute. Thrash brutally the man who has brutally thrashed child, dog, or horse, and the country would be rid of these offences remarkably soon. "Whoso shall offend one of these little ones which believe in Me, it were better for him that a millstone were hanged about his neck, and that he were drowned in the depth of the sea!"

# Company Law and Practice.

## LXV.

## STOCK.

LAST week we had under discussion in this column the possibility of the issue by a company of stock warrants payable to bearer, and this has prompted one of my readers to ask the question, "what is stock?"

To me this question brings back early memories of an arithmetic book, full of problems, in which impossible people were carrying out fantastic operations with sums of stock, and where the brokerage was always one-eighth. As far as I can remember, they never dealt with shares, and it dawns now that the reason may very well be that, subject to any provisions restrictive of such right contained in the articles of association, any fraction of stock may be sold and transferred, whereas, of course, shares must be dealt with whole. If, and there seems no reason to doubt it, this was a representative arithmetic book, the explanation of the lack of popularity of stock, as opposed to shares, can doubtless be discerned by those of my readers who have had the leisure to study the works of Dr. FREUD and his school; as for the others, that earnest band who have been too busy keeping up to date in their law to study such matters, their ignorance can hardly hurt them here.

It seems rather strange that in such a matter we have to turn for guidance to a case not dealing primarily with the law relating to joint stock companies. In *Morrice* v. *Aylmer*, L.R. 7 H.L. 717, it was held that the words "shares in any railway" used by a testator in describing the subject matter of a bequest in his will included stock held by him in a railway. Before referring to the part of Lord HATHERLEY'S judgment in that case which helps to put before one the idea of what stock really is, it is as well to turn for a space to s. 50 (1) (*c*) of the Companies Act, 1929.

By this section a company limited by shares, if so authorised by its articles, may in general meeting alter the conditions of its memorandum by converting all or any of its paid-up shares into stock, and by re-converting that stock into paid-up shares of any denomination. In *Morrice* v. *Aylmer*, *supra*, Lord HATHERLEY, at p. 724, after referring to the somewhat similar section of the Companies Clauses Act, 1845, s. 61, says, "There is a certain extent of change, as well as consolidation, in these paid-up shares. They are changed from ordinary shares in this respect, that they are no longer incapable of being sub-divided . . . The consolidated stock of a company . . . can be bought . . . split up into as many portions as you like, and sub-divided into as small fractions as you please . . . Independently of that, however, it possesses all the qualities of shares. It is, in fact, simply a set of shares put together in a bundle, with this peculiarity added to them, that they are transferable in a manner in which you cannot transfer the ordinary shares of a railway company."

It will be remembered that Lord HATHERLEY is there speaking of a company governed by the provisions of the Companies Clauses Act, and that, though, in the case of a company limited by shares under the Companies Act, if the articles contained no restriction, any fraction of stock could be transferred, the articles nearly always do contain some restriction. Thus Table A provides (Art. 31) that the directors may from time to time fix the minimum amount of stock transferable, though that minimum is not to exceed the nominal amount of the shares from which the stock arose.

Article 32 of Table A confers on the stockholders the same rights, privileges and advantages, according to the amount of the stock held by them, as if they held the shares from which the stock arose, with a qualification of these rights (except as regards participation in dividends and profits) in the case of such parts of stock as would not, if existing in shares, have conferred such rights.

A company cannot issue stock as a first transaction, there being no power in the relevant statute to do such a thing, though there appears to be no reason why it should not issue shares, and convert them very shortly after such issue into stock. At the same time, if a company has purported to issue stock for cash, the court may, in a winding up where all creditors are satisfied, and where the issue was made some years before the winding up and no previous objection had been made, look at the substance, and treat this as a valid transaction: *Re Home & Foreign Investment & Agency Co.* [1912] 1 Ch. 72 at p. 80.

On the other hand, however, in the same circumstances a stock purported to be issued as a bonus stock credited as fully paid is a complete nullity, and the holders thereof cannot rank in the liquidation for a dividend; nor can the holders of stock purported to be issued as partly paid, though equally no call can be made on them: *Home & Foreign Case, supra.* Such persons might have a claim against the company for any moneys actually paid by them to the company, on the ground that the moneys were paid up on a consideration which had wholly failed: *Alison's Case,* 9 Ch. App. 1; but the Statute of Limitations would, in a proper case, operate as a bar.

Though not perhaps a question which properly comes within the ambit of this column, it may be noted that a power to invest in preference stock given by a will does not empower trustees to invest in preference shares: *Re Willis* [1911] 2 Ch. 563.

(*To be continued.*)

# A Conveyancer's Diary.

A case upon this subject recently decided is *Re Savile Settled Estates; Savile* v. *Savile* [1931] W.N. 50.

**Power of Tenants for Life to Vary Terms of Leases.**

In that case the facts were that a tenant for life of a settlement, executed in 1884, granted two mining leases in 1924 and 1928 respectively, each for a period of sixty years. The tenant for life desired to execute deeds varying the leases by extending the term in each case to 100 years, and this summons was issued for the purpose of having it decided whether he had power to do so under s. 59 (1) of the S.L.A., 1925, or otherwise.

The provisions of s. 59 (1) are as follows:—

"A tenant for life may at any time by deed either with or without consideration in money or otherwise, vary, release, waive or modify, either absolutely or otherwise, the terms of any lease whenever made of the settled land or any part thereof or any covenants or conditions contained in any grant in fee simple whenever made of land with or subject to a reservation thereout of a rent which is or forms part of the settled land, and in either case in respect of the whole or any part of the land comprised in any such lease or grant, but so that every such lease or grant shall, after such variation, release, waiver or modification, as aforesaid, be such a lease or grant as might then have been lawfully made under this Act if the lease had been surrendered or the land comprised in the grant had never been so comprised or had been re-granted."

The other section which it is material to notice is s. 41 (ii), which enables a mining lease to be made for a term of 100 years.

Maugham, J., held that the tenant for life had power to make the variation. The learned judge said that s. 59 (1) was dealing only with the form of the document into which the tenant for life might enter. The sub-section was not limited to cases where the result of the variation, release, waiver or modification would take effect at common law, without the existing leases being surrendered, as a result of the operation of law. The sub-section conferred a power on a tenant for life to execute documents in a particular form which he could have executed in another form as a result of the surrender or re-grant of the land previously leased or granted.

After referring to the very wide language of the sub-section enabling any kind of variation, release, waiver or modification to be effected, his lordship continued: "In my opinion, therefore, the tenant for life has power, with or without consideration in money or otherwise, by deed to vary, release, waive or modify the terms of the two leases, including their length, provided that the leases shall, after the alteration, be leases for terms not exceeding 100 years from the dates when they respectively took effect. I do not propose to say in the declaration that it is done under s. 59; but I propose to say that the tenant for life has power to execute such documents."

The learned judge proceeded to express the opinion that an alteration of an existing lease so that it would operate for a term extending beyond the original term could operate in law only as a surrender of the old lease, and a grant of a new one, and he was disposed to think that the wiser course would be to add, after the declaration which he had mentioned, the statement that the declaration was "made without prejudice to the question whether the leases, as altered, would not, at common law, operate by way of surrender and re-grant.

Now, there is no doubt about the power of a tenant for life to accept surrenders of existing leases.

Section 52 (1) of the S.L.A., provides:—

"A tenant for life may accept with or without consideration a surrender of any lease of settled land whether made under this Act or not or a re-grant of any land granted in fee simple, whether under this Act or not, in respect of the whole land leased or granted, or any part thereof, with or without an exception of all or any of the mines or minerals therein, or in respect of mines and minerals, or any of them, and with or without an exception of any easement, right or privilege of any kind over or in relation to the land surrendered or re-granted."

And s. 52 (3) enables a tenant for life to make a new lease or grant in respect of any land surrendered or re-granted.

With regard to the observations of Maugham, J., as to surrender by operation of the law, it has long been settled that a surrender by deed is unnecessary where the former lessee accepts a new lease, as the fact of his doing so is evidence that the new lease has been accepted by him, and such acceptance operates as a surrender in law. The term "surrender by operation of law" is properly applied to cases where the owner of a particular estate has been a party to some act, the validity of which he is by law afterwards estopped from disputing and which would not be valid if his particular estate continued to exist. Thus, where a lessee for years accepts a new lease from his lessor, he is estopped from saying that his lessor had not the power to make the new lease; and as the lessor could not grant the new lease until the prior one had been surrendered, the acceptance of the new lease is of itself a surrender of the former one. Such surrender is the act of the law and takes effect independently of and even in spite of the intention of the parties. (See *Lyon* v. *Reed* (1844), 13 M. & W. 285).

A new lease will be effectual and have the result of effecting a surrender of a prior lease even though the new term be created by parol (assuming, of course, that it is valid) and the prior lease was by deed, and although the new lease may be for a shorter term.

In *Re Savile* the learned judge considered that the deed of variation of the term would have the same effect as the granting of a new lease for the new term, with the result that the existing lease would be surrendered by operation of the law.

In fact, what s. 52 (1) seems to do is to enable a tenant by means of a deed of variation to bring about the same result as the granting of a new lease, either with or without a surrender by deed of the old one.

The sub-section is, however, not confined in its operation to cases where a surrender by operation of law would be effected, but applies also where the variation or modification is not such as to have that effect. It seems, however, that if the variation takes the form of an alteration of the term of years, that must necessarily operate as a surrender of the old term.

## Landlord and Tenant Notebook.

**Sub-Tenancies and Control.**

The Increase of Rent etc. Restrictions Act, 1920, expressly provided for security of tenure in the case of sub-tenants to whom premises have been lawfully sub-let by two different provisions, s. 5 (5) and s. 15 (3). Of these, the former (now s. 4 (5) of the Rent etc. Restrictions Act, 1923), is part of the famous section dealing with restrictions on possession, and the sub-section saves the rights of sub-tenants against whose landlords orders may be made *under the section*. Section 15 is the section which defines (more or less) the nature of a statutory tenancy, and the effect of the sub-section is that *where a mesne tenancy is protected*, its determination, however effected, establishes privity between the sub-tenant and the head landlord.

Two kinds of sub-tenancies remain outside these provisions. Both sub-sections apply only in cases in which the premises have been "lawfully" sub-let; thus, if a protected tenant sub-lets in breach of a covenant against alienation, he is caught by s. 5 (1) (*a*) (now s. 4 (1) (*a*) of the 1923 Act) (breach of an obligation of the tenancy) and the sub-tenant is not saved by s. 5 (5): *Dick* v. *Jaques* (1920), 36 T.L.R. 773; and, if the protected mesne tenant surrenders in such a case, the sub-tenant can claim no interest under s. 15 (3): see *Standingford* v. *Bruce* [1926] 1 K.B. 466.

If, however, the sub-lease be lawfully granted, an order for possession made against the mesne tenant does not affect the rights of the sub-tenant and does not apply to the part sub-let; and this applies to forfeiture proceedings as well as to actions arising out of other modes of determination, for the wording of the sub-section is "An order for the recovery of possession . . . or ejectment . . ." Thus, in *Ward* v. *Larkins* (1923), 67 Sol. J. 657, the head lessor forfeited the lease on the ground of disrepair, but no order could be made to affect the sub-tenant.

The other kind of sub-tenancy which is not affected by the two sub-sections is a sub-tenancy carved out of an unprotected tenancy. Either the amount of the rent or the user of the premises may exclude the mesne tenant's interest; or he may lose protection by sub-letting the whole: *Roe* v. *Russell* [1928] 2 K.B. 117 (C.A.). And that the position of the sub-tenant was then problematical was a proposition acceded to by three lords justices in the case of *Berton* v. *Economic Alliance Investment Co.* [1922] 1 K.B. 742 (C.A.). The claim was for forfeiture for breaches of covenants not to permit the use of premises otherwise than as a dwelling-house and not to suffer, etc., any annoyance. The defendants had a tenant who had entered into covenants against alienation and nuisance, in breach of which he sub-let the whole to weekly tenants. The defendants forfeited the lease to their tenant (no relief being possible before the L.P.A., 1925, was passed) but did not proceed against the occupying weekly sub-tenants. Acting on counsel's advice, they took the view that the latter were protected, and went as far as to warn them, to accept rent from them, and to suggest an application to discharge the covenant under what would now be the Housing Act, 1925, s. 102. These acts and omissions were the subject-matter of the freeholders' complaint, but in holding that there had been no "permitting" or "suffering," Bankes, L.J., considered that the Act and the state of the authorities justified any prudent solicitor in advising his client that in any proceeding against the under-tenants there was every probability of failure, and Atkin, L.J., also referred to the position as one of doubt.

Before the passing of the 1920 Act, with its express provisions safeguarding sub-tenants, the point had arisen in two cases. In *Cottell* v. *Baker* (1920), 36 T.L.R. 208, an ordinary action for possession was brought against a tenant whose term had expired, and his sub-tenants. The only part of the premises occupied by the tenant was a shop, but the sub-tenants were lawfully in occupation of other parts. The tenant had therefore no defence, but the court held that the sub-tenants were protected by the first sub-section of the Increase of Rent etc. Amendment Act, 1919, which, for present purposes, corresponds to the first sub-section of s. 4 of the 1923 Act: "No order for the recovery of possession of a dwelling-house to which . . . applies shall be made . . . unless." The reasoning was that the sub-tenants were tenants on their own account. And a few weeks later, in a case reported in *The Times* of 19th May, 1920, a forfeiture action was heard against tenants whose rental excluded them from the Acts and against their sub-tenants, the cause of forfeiture being the sub-letting to people of that class, which was a breach of covenant against nuisance. The sub-tenants did not appear. Rowlatt, J., took the view that he must make an order providing that there should be no execution against them without further leave of the court. He also advised the freeholders to call upon them to produce their agreements, and said if they did not they might find themselves in the street.

The above cases do show that a mesne tenant not entitled to protection cannot resist an order for possession, and in many cases superior landlords can thus get rid of the intermediary. If (as sometimes happens when long leases have been granted at nominal rents), the mesne tenant cannot be found, a forfeiture notice may be left on the premises. Ejectment can always be brought against either tenant or sub-tenant or both; substituted service can be resorted to if necessary. And it might well be argued that, since the passing of the 1920 Act, with the express provisions containing the limitations indicated by italics at the commencement of this article, there is nothing to protect the sub-tenants. For the superior landlord is not proceeding "under this section," nor is his tenancy protected. But if, in spite of the provisions referred to, the reasoning adopted in *Cottell* v. *Baker* prevailed, possession would not be obtained.

## Our County Court Letter.

### INVALID REDUCTION OF MINERS' WAGES.

In *Stafford* v. *Birch Coppice Colliery Company Limited*, recently heard at Atherstone County Court, the claim was for £7 17s. 4d. as (*a*) wages due in lieu of fourteen days' notice, and (*b*) the difference between contract rate and that actually paid. The plaintiff's case was that (1) he signed an agreement as an erector of steel arches, subject to fourteen days' notice; (2) a further agreement was made in February, 1930, to erect steel arches and remove dirt at a wage of £1 a yard; (3) last July this rate was reduced to 15s. without notice, the explanation being that the "dirt" was thinner, and therefore easier to remove. The agent to the Warwickshire Miners Association stated that (*a*) the work was outside the ordinary price list, and separate contracts were therefore made, but never at the price offered; (*b*) the custom was to make verbal contracts, and the manager should have arranged the reduction with the plaintiff. The defendants' manager denied agreeing to the £1 a day, and stated that (*a*) the plaintiff was promised not less than 15s.; (*b*) the custom was to pay according to the thickness of the width of dirt for removal, without giving any notice of reduction; (*c*) the plaintiff ought in fact to have had the reduced rate several weeks previously, as even 15s. was a generous price. His Honour Judge Drucquer gave judgment for the plaintiff for £5 10s. 1d. and costs. The matter was said to interest 70,000 miners, including 20,000 face workers.

### DEPENDANTS' COMPENSATION AND UNEMPLOYMENT BENEFIT.

THE mutual bearing of the above was considered in the recent case of *Cartwright* v. *Pelsall Slag Company*, at Walsall County Court, in which a widow claimed an award on the basis of total dependency. It was agreed that, on proof of the latter, she would be entitled to £298 7s., but the respondents contended that (1) she was only partially dependent, as she was in receipt of 15s. a week as unemployment insurance; (2) the capitalised value of this, at three years' purchase, was £117, and (3) the applicant was really only entitled to the balance of £181, but £250 had nevertheless been paid into court in full discharge. His Honour Judge Tebbs, in a reserved judgment, observed that the applicant had lost her employment on marriage, owing to a rule of the firm, and the deceased had been killed eight months afterwards, while the applicant was still in receipt of unemployment benefit. She was therefore only partially dependent, but the question arose as to the construction of the Workmen's Compensation Act, 1925, s. 8 (2) (iv) which provides that the lump sum shall not exceed that payable for total dependency, but is to be "reasonable and proportionate to the injury to the dependants." The amount might therefore be assessed as in cases under the Fatal Accidents Act, 1846, as the words "proportionate to the injury" were only inserted to deal with the case of more than one dependant, and could not be used to cut down the award if the injury were in excess of the total sum recoverable. As the couple were both young, and the applicant might have been supported by the deceased for the rest of her life, she was entitled to the same amount as for total dependency, viz., £298 7s., with costs on scale B. A stay of execution was granted and the money, except as to £50, was ordered to remain in court pending an appeal. It is to be noted that the analogous subject of public assistance was considered in *Byles* v. *Pool* (1909), 2 B.W.C.C. 484.

### THE AGRICULTURAL HOLDINGS ACT, 1923.

RECENT decisions have been given with regard to :—

(*a*) *Deduction of Dilapidations from Tenant Right Valuation.*

In *Dormer* v. *Hunt*, at Oxford County Court, the applicant had let a farm for five years from Michaelmas, 1929, on the terms (inter alia) that the respondent would, before taking possession, pay the valuation due to the quitting or outgoing tenant. The latter was the trustee for the creditors of a tenant who, under an agreement of the 1st October, 1909, was entitled to compensation on quitting, subject to deductions for dilapidations. The applicant, however, claimed the full amount of the valuations in 1929, and the respondent, having counter-claimed for the amount of dilapidations (payable under the agreement of 1909), had applied to the Minister of Agriculture to appoint an arbitrator. The latter's decision being in favour of the tenant, the landlord had obtained from the court a direction to the arbitrator to state a point of law in the form of a special case. The respondent contended that nothing was due to the landlord, but, although the total deduction would probably exceed the amount of the tenant right, it was not claimed that the landlord was liable for the balance. His Honour Judge Randolph, K.C., held that (1) there was no patent or latent ambiguity in the respondent's covenant (of 1929) to pay the valuation to the quitting tenant, (2) that valuation was the amount of compensation due under the agreement of 1909, which provided that "dilapidations" did not include any breach of the tenant's agreement to do repairs, (3) the applicant, however, was not thereby entitled to be paid the full valuation without deduction. The respondent was awarded costs on scale C.

(*b*) *Validity of Notice to Quit.*

In *Lely* v. *Everard*, at Lincoln County Court, the applicant's solicitor had written, on the 23rd January, 1929, requesting payment of £14 6s. 6d. arrears of rent by the end of the month, but the respondent did not reply until the 18th March, when he sent £15. The applicant's solicitor, in acknowledging the cheque, had advised the respondent to take a smaller farm, and had enclosed notice to quit at Lady Day, 1930. The arbitrator had stated a case as to whether the letter of the 23rd January was a notice within the above Act, s. 12 (1) (*b*), and whether, as no rent was due at the date of the notice to quit, there was any evidence that the tenant had already "failed to comply within a reasonable time with a notice . . . requiring him to pay any rent." The applicant contended that (*a*) the precise words of the demand were immaterial, (*b*) as the arrears were still unpaid for another three months, the subsequent payment did not disentitle the landlord to give notice upon the ground of non-compliance within a reasonable time, (*c*) the respondent was not entitled to a year's rent as compensation. The respondent contended that (*a*) the first letter was too vague to constitute notice, (*b*) if, however, it was sufficient, then there had been no failure to comply, as the acceptance of the rent by the applicant prevented him from alleging non-compliance as the reason for the notice to quit. His Honour Judge Langman held that the letter of the 23rd January was a sufficient preliminary notice, but, as there were no arrears at the date of the notice to quit, there was no evidence of any failure by the respondent to comply with the demand within a reasonable time. The tenant was therefore entitled to a year's rent as compensation for disturbance, and, as the applicant had failed on the main issue, he was ordered to pay the costs.

## Practice Notes.

### EVIDENCE IN POSSESSION CASES.

THE Increase of Rent, etc. Restrictions Acts confer a status on certain premises, and the jurisdiction of the court to make an order for possession is affected accordingly. A protected tenant is thus under no obligation specially to plead the Act in order to secure the benefits it confers upon him. And the Rent Restriction Rules cast upon the judge the duty of inquiring and satisfying himself that the provisions of the statute have been fulfilled before he makes any order. In *Salter* v. *Lask* [1924] 1 K.B. 754, C.A., Bankes, L.J., said (at p. 760): "Rule 18 of the Increase of Rent (Restriction) Rules places upon the judge the duty to inquire whether the premises are within the Act . . . It is true that there was evidence that the rent was two guineas a week, but no evidence was given of the rateable value."

In many actions brought nominally for possession, the landlord relies on non-payment of rent, but does not expect to get more than an order suspended as long as current rent plus so much off the arrears is paid. In these cases the plaintiff admits that the premises are controlled and the practice in most courts is that the matter resolves itself into a discussion of the tenant's means. At Lambeth County Court, however, the deputy judge recently considered himself bound by the rule not to adjudicate until affirmative evidence was given not only of the 1914 rent, but also of the increases, and a plaintiff who could prove the 1914 rent and net rent and could show that the difference was such that the permitted amount was not exceeded did not discharge the burden, for the judge had yet to be satisfied that the increases had been effected by the proper notices specified by s. 3 (2) of the 1920 Act. It may be that this ruling was technically correct, but some uniformity in the matter of evidence which should satisfy the court "that such order may properly be made, regard being had to the provisions of the Act," seems desirable, and it is unfortunate that a plaintiff should have to run the risk either of being non-suited or of having witnesses' expenses disallowed.

Mr. John Paley Hubbersty, M.A., solicitor, of Ilkley, and of Leeds, left £14,473, with net personalty £13,124.

# POINTS IN PRACTICE.

**Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.**

**Sale by Second Mortgagee**—Effect.

*Q.* 2144. Some time ago, A, the owner of the piece of freehold land "Blackacre" (a smallholding of about 4 acres), purported to sell the same to my client, B, subject only to a first mortgage thereof to a first mortgagee (the Public Works Loan Board); B, since paying to A from time to time parts of the purchase money which aggregate a very substantial sum, part of which has been applied by A, with the acquiescence of B, in discharge of the interest and part repayment of the principal on the first mortgage. B has, however, recently discovered that there is also a duly registered second mortgage on the property for a substantial amount with interest very much in arrear; with the result that on market value the whole, or at any rate a very large portion, of the amount paid by B to A must be treated as irrevocably lost. In the hope, however, of recovering at some future time on then possible improved values, B has agreed to purchase "Blackacre" from the second mortgagee subject to the first mortgage. On the completion of the conveyance from the second mortgagee to B, it is assumed that B will thereby become (subject only to the first mortgage) absolute owner of "Blackacre," and that he can accordingly proceed to eject A and any other person claiming under him, including any tenant or other occupant from possession of the property.

(1) Is this view of absolute ownership subject to the first mortgage, but to the entire exclusion of A and those claiming under him, well founded?

(2) What are the various courses open to B to effectually eject A and those claiming under him from possession of "Blackacre" and to their entire exclusion?

(3) It is presumed that A and those claiming under him are in no way protected by the Restrictions Acts or otherwise?

(4) In this connexion, would it be better to recite in the conveyance by the second mortgagee to B that interest was in arrear, so as to thereby record evidence that the mortgagor, A, and those claiming under him had irrevocably lost the protection of those Acts?

*A.* (1) This view of absolute ownership subject to the first mortgage appears to us to be correct, subject always to the possibility of there being lessees of A properly let in by A under his statutory power to lease when in possession.

(2) By entry, or if A will not go out peaceably, by action. Lessees properly let in as above by A could not, of course, be ejected.

(3) No, no protection is afforded to A (and those other than such lessees as above) by these Acts as the interest has been more than twenty-one days in arrear: Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, s. 7.

(4) It would certainly be advisable to recite that interest was more than twenty-one days in arrear.

**Solicitor**—Notice of Bankruptcy Acquired *aliunde*—Duty.

*Q.* 2145. A died leaving her surviving her husband, B, her two sisters, C and D, and issue of a deceased brother. B and C are taking out letters of administration to A's estate, which, after payment of death duties and costs, amounts to approximately £1,200. B claims the personal chattels and £1,000, free of duty and interest, in accordance with the A. of E.A., s. 46. It has, however, by chance, come to my knowledge, as the solicitor acting for all the parties, that B became a bankrupt about fifteen years ago and is still undischarged. Is it my duty to tell B that I have received this information and to communicate with the trustee in bankruptcy? It is emphasised that the fact of B's bankruptcy was ascertained incidentally in a matter not connected with the administration of A's estate.

*A.* We express the opinion that it is our subscriber's duty to inform B that he has acquired knowledge of the bankruptcy, and to communicate with the trustee in bankruptcy or Official Receiver. We base this opinion on a consideration of his duty as an officer of the court, and we do not think that the fact that he obtained knowledge of the bankruptcy incidentally in a matter not connected with the administration of A's estate is really material. Further, the protection of C as one of the administrators is to be considered.

**Tithe Rent Charge**—Owner of Part of Rent Charge to Pay Whole Charge—Remedy.

*Q.* 2146. There is in this county a large piece of land which is subject to tithe under one apportionment. A owns say one-third of this. A did own another third of this, but has sold it in lots. A never did own the remaining third. The tithe owner has now come down upon A, who is a substantial man, for the tithe on the whole of the land. He is quite willing to pay as to the one-third which he owns, and by covenants which he has taken from the purchasers of the second one-third he can recover from them. If he pays the total amount of the tithe, including that on the third which he has never owned, how can he recover from the owners of that third, of which there are several? Can he sue them for money paid on their behalf? As stated above the tithe owner ignores everybody but A, and insists upon him paying the whole of the tithe, as, as you are aware, he can rightly do.

*A.* There is a lack of authority on the point, but it would seem that the provisions of the Tithe Acts have taken from A the common law right of a man who is compelled to pay a sum to part of which another person is liable to contribute, his right of action for money paid. If A is compelled to pay the whole of the rent charge (up to the statutory limit of two years) he may apply to the justices under s. 16 of the Tithe Act, 1842, for an order to determine what is the just proportion payable by the owners of the other parts of the land. This is a preliminary to his right to recover anything. Having obtained his order, it would then appear he must take proceedings under the Tithe Act, 1891, and the rules thereunder, as if he were the owner of the tithe rent charge, see s. 10 (4). It is this sub-section which it is conceived has taken away the right of action of common law. The case of *Simmons* v. *Heath* [1893] 62 L.J. Q.B. 445 (case as to extraordinary tithe rent charge) may be referred to. The case was confirmed on another ground: 63 L.J. Q.B. 214. Obviously this is a case in which A should endeavour to obtain a legal apportionment of the tithe from the Board of Agriculture and Fisheries.

**Enfranchised Copyholds** Failure to Produce Assurances to Steward - Confirmatory Deed.

*Q.* 2147. In June, 1928, A.B. conveyed copyhold property to C.D., and on the following day C.D. executed a mortgage in favour of E.F. In December last C.D. conveyed the

property (subject to the mortgage) to G.H. G.H. paid off E.F.'s mortgage and obtained a statutory receipt. None of these documents have been produced to the steward of the manor. Presumably the legal estate has reverted to A.B. Can G.H. get a good title by taking by way of confirmatory deed a conveyance of the legal estate from A.B.? Would there be any need to produce the other deeds (as they relate only to the equitable estate) to the steward who, of course, cannot certify them as having been produced?

*A.* We agree that G.H. would obtain a good title by taking, by way of confirmatory deed, a conveyance of the legal estate from A.B. Yes, the conveyance and mortgage of June, 1928, and the vacating receipt will have to be produced to the steward, as he is entitled to his fees in respect of these transactions (L.P.A., 1922, s. 129 (2)).

### Mortgage Bankruptcy of Mortgagor Sale.

*Q.* 2148. A client, some years ago, lent A a sum of money on mortgage of freehold farms and cottages. A has now become bankrupt, and our client has had the usual form of proof sent him, which he has filled up, and valued his security at the exact principal sum which was lent. He did this because on previous enquiry he found that he could probably dispose of the entire mortgaged property for the amount of the mortgage money. The official receiver was asked to join in the conveyance to the purchaser to release the bankrupt's equity in the property, but he refuses to do so without a consideration and certain fees for valuation and legal advice. The mortgagee is not prepared to pay any of these, as he is of opinion that the property is not worth more than the mortgage money, and so there is an impasse. It is thought that if any delay arises, the proposed purchaser's offer will be withdrawn. Can the mortgagee sell the property to the proposed purchaser, regardless of the official receiver, or must he sell it by public auction? If he does the latter, no doubt a considerable loss would follow. If he cannot sell either privately or by auction, what is his position? Is he entitled to sell with the property if, in fact, a sale takes place, the tillages and emblements, i.e., seed planted but not yet matured? There is no interest in arrear on the mortgage, and no notice has been given calling it in.

*A.* If the mortgage was made before 1926 and if it expressly gave a power of sale on the bankruptcy of the mortgagor, the mortgagee can sell by private contract at what he deems a fair price, but should as a matter of policy give the official receiver or trustee notice of his intention so that the latter may redeem if he wishes. If the mortgage deed bears date after 1925 the mortgagee cannot sell on account of the bankruptcy even if there is such an express power, without leave of the court, L.P.A., 1925, s. 110. Assuming a mortgage deed prior to 1925, and no express power, the mortgagee must either call in the money and wait three months or wait till interest is in arrear for two months unless there had been a breach of some other covenant or provision so that the mortgagee can sell under s. 103 (3). He has no power otherwise to sell even by auction.

### Increase of School Fees.

*Q.* 2149. A school owned by a company having about 200 pupils, as is usual, issued a prospectus mentioning certain fees. The council of the school have now decided to increase the fees for all pupils, and issued a notice in the middle of a term that from the beginning of next term the fees would be increased by a named amount. (*a*) Is the school under any legal liability to continue pupils at the rate of fee prevailing when the pupil entered until the pupil's parents decide to take the pupil away, or can the school raise the fees at any time? (*b*) Assuming the school is entitled to raise the fees, are they bound to give at least one term's notice so as to enable a parent who wishes to take a pupil away on account of the increased fee to give the necessary one term's notice that the pupil will be removed.

*A.* (*a*) The company is under no liability to continue pupils at the rate of fee prevailing, when the pupil entered, until the parents decide to take the pupil away, as the contract is not to educate the child until the school-leaving age, but (in its inception) was a contract for one term, and so on from term to term. (*b*) The company could not insist on a term's notice of withdrawal, as the right thereto is waived by giving only a half-term's notice of increase. A difficult point is raised as to whether the parent is entitled to a term's notice of increase, but (unless the local conditions make it difficult to make other arrangements) the opinion is given that a half-term's notice is reasonable, so that the parent cannot claim to keep the pupil at the school for another term at the old rate.

### Sale of Shares at a Discount.

*Q.* 2150. The directors of a small private mining company are desirous of opening up a new drive and have found two gentlemen who are prepared to put up the necessary capital providing they can receive three £1 fully paid shares for every £2 paid. Is there any simple way of effecting this without having to apply to the court under the Companies Act, 1929, s. 47? If the new drive is a failure, or if it is not undertaken, the company will have to go into liquidation. To obtain the new capital without delay the directors are prepared to transfer sufficient of their own holdings to make up the "bonus" shares on the understanding that if the drive is successful and a reconstruction takes place, these Directors shall not lose anything by giving up some of their shares now. If this is done is there any way of safeguarding their interests which will be binding on the rest of the company?

*A.* It is not clear from the question why a reconstruction should take place, if the drive is successful, nor is it explained how the directors may lose anything by giving up some of their shares now. It is apprehended that (*a*) as it is a private company, the directors have the power of refusing to register a transfer of shares, without assigning any reason: (*b*) the directors and old shareholders will still retain the majority of votes, even after transferring the required number to those who are to provide the fresh capital. The directors can safeguard their interests, however, by entering into an agreement (to which both the new and the old shareholders will be parties) regulating the allotment of shares on a reconstruction, and any balance of power can be adjusted by giving the directors more votes per share than the other shareholders. The articles of association will then need to be altered in pursuance of such agreement.

### Debenture Trust Deed Vacating Receipt.

*Q.* 2151. Property was conveyed to trustees to secure an issue of debenture stock. The debentures have now been paid off and separate receipts obtained from each stockholder, and the stock certificates have been cancelled. It is desired to have the property transferred out of the names of the trustees into the name of the company who mortgaged same. The debenture stock has been redeemed and paid off at different dates over a period of years. The money has not, of course, been repaid to the trustees for debenture-holders. What is the form of receipt which should be endorsed on the debenture trust deed, or should the property be re-vested in the original owner by re-conveyance?

*A.* It is not possible to deal very adequately with this question without knowing the date and form of the trust deed. We gather, however, and assume for the purposes of this reply, that the deed was pre-1926. As it is rather obscure whether pre-1926 debenture trust deeds are in many cases mortgages, we think it is advisable to have an express reconveyance so framed as to re-vest in the company such estate (term or otherwise) as may be in the trustees. Our subscribers are referred to "Everyday Points in Practice," Pt. V, s. 9, case 3, at p. 333, for a discussion as to whether debenture trust deeds are, or are not, mortgages.

# Correspondence.

## Ejectment of Unmarried Couple.

Sir,—In reply to the letter printed on p. 94, it seems to me that Mr. Justice Bucknill's "saving proviso," in *Upfill* v. *Wright* [1911] 1 K.B. 306, p. 513, merely indicated that he was applying the law to the case before him, and not to another hypothetical one, which might remain to be considered on its merits. In that raised in "Points in Practice," however, there was no question of marriage. In *Upfill* v. *Wright*, the essential invalidating factor was that the premises leased were to be used for an immoral purpose, namely intercourse between a man and a woman who were not married to each other. If the purpose of occasional immoral intercourse vitiates the contract, I should have thought that of immoral cohabitation would be an *à fortiori* case.

12th February. A. F.

## Trustee Act, 1893.

Sir,—I have just had a case where a company of which I am chairman has been served with an order appointing a new trustee of a trust of which there were three trustees, and the trust investments beside land include a very great many shares and stocks in limited companies.

The order in the usual way removes a trustee who has become incapable of acting, and appoints a new trustee in his place, who will act with the two original trustees who are not affected by the order.

The order proceeds in the usual form in "Seton" which I understand was settled by Sir George Jessel.

To carry the order out the two original trustees and a new trustee are ordered to execute transfers from themselves to themselves, which transfers will all have to be registered and new certificates will have to be made out.

It occurs to me that it would have been better if the Legislature had provided that the removal of a trustee should, for the purposes of shares and other securities in limited companies, be taken as his notional death on the date when the order removing him was made.

Where there are, say, four trustees, it would certainly be better, as all that would be necessary would be to exhibit the order at the offices of the various companies, and it would dispense with transfers altogether, as these trustees are as a rule sufficient.

It seems to me that it is a useless procedure that three persons who are trustees should execute transfers from themselves to themselves, as under ordinary circumstances a transfer from A.B. & C. to A.B. & C. is a nullity.

I shall be glad to see your illuminating comments on what I have, probably imperfectly, expressed above.

E. T. Hargraves.

Coleman-street, E.C.2.
26th January.

## Joint Deposits and Joint Investments.

Sir,—Herewith I enclose copy of a letter on the above subject, which I have to-day addressed to the Chancellor of the Exchequer, which you may consider to be of general interest.

Bath. Country Solicitor.
20th January.

20th January, 1931.

To The Rt. Hon. The Chancellor of the Exchequer.

Sir,—I venture once again to draw your urgent attention to what I believe to be the very serious leakage of revenue due to the present operation of the law on joint deposits and joint investments. From my experience in the course of practice I find that clients repeatedly consult me on this subject, having previously discussed the matter with bankers, stockbrokers, accountants and even other solicitors. In every case the advice previously given has been to urge the placing of monies in joint accounts and investments in joint names, with the deliberate intention of evasion of death duties. I have no hesitation in saying that bank managers throughout the country are consistently advising this course at the present time.

You will be aware that in the case of joint deposits and joint investments it is a perfectly simple matter, on the death of the first joint holder, to register a death certificate, and that thereupon the survivor is in law entitled to deal with the deposit or security, there being no onus upon either the bank or the company to satisfy themselves that the joint holding has been disclosed in the revenue affidavit and duty paid thereon.

It would seem that the permanent officials at the Treasury do not regard this leakage as serious. With this view I profoundly differ, though, of course, my professional position precludes me from furnishing the revenue with specific instances in proof of my contention.

It should be a perfectly simple matter to enact that upon presentation of a death certificate for registration against a joint holding the bank or registrar should forthwith be placed under obligation to notify Somerset House of receipt of the request to register, and that no dealings with joint holdings should be permitted until after the lapse of, say, fourteen days from presentation of the certificate. This would enable the revenue to refer to the revenue affidavit, and failing disclosure of the joint holding therein to place a stop upon dealings pending further investigation.

I may perhaps add that my views on the whole subject are strengthened by the fact that in many instances when I have felt compelled to advise that joint investment was not effective to evade duty the client has not scrupled to take exception to the advice given, and that in more than one case I have reason to believe that the client has sought other and more palatable advice, doubtless with consequent loss to the revenue. It is obvious, therefore, that solicitors who give honest advice upon the subject are at present liable to be penalised for that advice, and it is to be hoped that legislation will be introduced into the next Finance Bill to stop this method of evasion.

# Books Received.

*Pitman's Solicitor's Clerk's Guide.* By E. A. Cope. Revised by F. G. W. Lester. Crown 8vo. pp. (with Index) 214. London: Sir Isaac Pitman & Sons, Ltd. 4s. net.

*Sterling* versus *Sterling and Another.* A Novel. By E. W. Pocock. Crown 8vo. pp. ix and 288. London: Cecil Palmer. 7s. 6d. net.

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# Legal Parables.

## THE SEVERE MAGISTRATE AND THE HEALTH CRANK.

There was once a Metropolitan Magistrate who was perhaps a little too severe with the transgressors brought before him. But he was not really bad at heart, for he always spent his summer holidays on the Riviera where he was quite popular with the right people. Moreover, he was a Vice-President of the League for Making Everybody Good, and so, whenever the police found two people in a public park after sunset and said that it was an exceedingly unpleasant case, he generally felt that it was his duty to the nation not to take a lenient view.

One day, a constable caught a young man in Hyde Park who wanted to go about with nothing on, because he said it was good for him and would make him live a long time. Well, this young man was quite sure he was right, but he was rather afraid of the severe Magistrate, so he though he'd better have someone to defend him. He would have liked to have had Mr. Roman Debrett, the famous K.C., but as he hadn't much money he had to be content with an idle fellow who spent most of his time in his chambers studying the illustrated papers.

The severe Magistrate had more than once said that people like the young man ought to be sent to prison for a long time and would probably have taken a very serious view of the matter, only when he glanced at the papers on his desk just before the case was called on, he was shocked and astonished to notice a copy of "The Glass of Fashion" open at a picture of himself which had appeared without his knowledge or consent. It was a photograph which, while he was in the South of France, he had inadvertently permitted to be taken at a moment when he was exposing a very considerable proportion of the surface of his skin to the beneficent rays of the Mediterranean sun. On his left was a Vicountess and on his right a well-known author, both similarly occupied. They all looked very happy indeed. Beneath the picture was an appropriate caption.

When the idle fellow representing the accused asked for an adjournment, it was most obligingly granted. The case has not yet been heard and the young man is still at large.

Moral: Circumstances alter cases.

# In Lighter Vein.

THE WEEK'S ANNIVERSARY.

On the 19th February, 1388, Robert Tresilian, formerly Chief Justice of the King's Bench, was executed at Tyburn for high treason. The piece of political intrigue which brought about his downfall was an episode in the struggle between Richard II and his Parliament. In 1386, it had passed a statute transferring the management of the state and revenue from the King to eleven commissioners. In an attempt to undo this, the Chief Justice, who adhered to the court party, extorted from the judges a declaration that this was "derogatory to the royalty and prerogative of the King." The plan failed and Tresilian lost his place. He might have escaped abroad with most of those involved, but venturing back to Westminster, disguised as a farmer, to watch the course of events, he was recognised, arrested and executed.

OLD BOOKS.

At the dinner of the International Antiquarian Booksellers' Association, Lord Darling spoke in praise of old books—"the smell of them, their leather bindings, their silver clasps."

As to their smell, one wonders whether his lordship loves it as well as did the learned Baron Parke, the "black-letter lawyer." Once, when he was taken with a fainting fit in court, all the known restoratives were applied in vain. At last, the story goes, someone who knew him well sent to the library for a musty volume of old statutes and held it under his nose. The well-loved odour revived him immediately.

JUDICIAL SICKNESS.

It is comparatively rare for judges to be obliged by illness to withdraw from the bench during the hearing of a case, as was Mr. Justice Branson at Monmouth Assizes.

One of the most dramatic of such occasions was the trial of Charles Pinney, Mayor of Bristol, in 1832, in connection with the riots there. Lord Chief Justice Tenterden insisted on presiding in spite of sickness, but, after fainting several times, was obliged to give up the attempt. Nevertheless, he made a point of reading and commenting on the notes of the remaining judges after each day's hearing. Finally, he lapsed into unconsciousness, which lasted almost till his death, when he expired with the words, "Gentlemen of the jury, you may retire."

A DOMESTIC DECISION.

News of a legal decision of profound domestic importance comes from the United States, where the unwelcome presence of a mother-in-law in the home has been held good ground for judicial separation at the suit of a young wife. The husband had to choose between the consortium of his spouse and the society of his parent.

This view recalls the old joke attributed to Lord Russell of Killowen on the subject of the severest penalty for bigamy —two mothers-in-law.

THE MARCH OF EDUCATION.

Information received from the Central Markets of Paris states that licensed porters have to pass not only a physical but also a literary test, comprising dictation and composition.

It is surprising to hear that abroad officials and educationalists are let loose on that sort of quarry, though in England we are, of course, quite inured to it and have been for many long years. It was Cockburn, C.J., who complained that an elderly charwoman employed to light the fires in the judges' rooms had been haled away in her old age to undergo a Civil Service examination!

BLIND JUSTICE.

Recently, Mr. C. J. Conway, K.C., could be neither "seen" nor "heard" by Mr. Justice Swift, because, though he was in court, the robes that would have made him visible and audible were on their way from Norwich Assizes.

Sometimes, it is a superfluity of ornament which gives rise to temporary deafness on the Bench. For example, a counsel once ventured before Lord Denman at Lewes Assizes with a rose in his coat. "I cannot hear you," said his lordship. Counsel raised his voice. "I cannot hear you": the formula was again repeated. Counsel shouted. "You compel me to speak," said the Chief Justice. "I do not allow 'button-holes' in my court."

THE LIVELY CAT.

It should somewhat comfort Judge Crawford for what he recently called "these namby-pamby days," to hear that the Common Serjeant and most other criminal judges still have a use for the "cat" and would not mind extending its application to blackmailers.

Probably no judge in modern times has wielded the lash more unstintingly or to better purpose than the late Day, J., known as "Judgment Day." It has been computed that in fourteen years he distributed 3,793 strokes of the "cat" among 137 criminals.

His most notable use of the dreaded weapon was to quell a hooligan gang which was terrorising Liverpool. By some mischance, a number of the first batch of prisoners, being found medically unfit for flogging, got off with short terms of imprisonment. Therefore, at the next assizes, Day, J., postponed sentence till the doctors had had their say and, where necessary, awarded long terms in lieu of lashes.

# Notes of Cases.

## Court of Appeal.

**Rex** *v.* **London County Council; *Ex parte* The Entertainments Protection Association, Ltd.**

Scrutton, Greer and Slesser, L.JJ. 27th January.

LICENCE FOR ENTERTAINMENTS ON SUNDAY—SUNDAY OBSERVANCE ACT, 1781—REMISSION OF PENALTIES ACT, 1875—CINEMATOGRAPH ACT, 1909—SCOPE OF *Certiorari*.

Appeal from the King's Bench Division (75 SOL. J. 15).

The Divisional Court had given judgment making absolute a rule *nisi* for *certiorari* directed to the London County Council to bring up and quash an order dated the 29th May, 1930, authorising the Streatham Astoria to open for cinematograph entertainments on Sundays, Christmas Day and Good Friday.

SCRUTTON, L.J., said that by the Sunday Observance Act, 1781, "any house, room or other place which shall be opened or used for public entertainment or amusement . . . upon any part of the Lord's Day called Sunday and to which persons shall be admitted by the payment of money or by tickets sold for money shall be deemed to be a disorderly house." The Remission of Penalties Act, 1875, empowered the Crown to relieve persons who had broken the Act of 1781 of the penalties incurred by them. It therefore presupposed that the old Act was still in force. Moreover, an Act remains in force as long as it is on the Statute Book. The Cinematograph Act, 1909, empowered local councils to grant licences to cinematograph theatres, subject to "such terms and conditions and under such restrictions as . . . the council may by the respective licences determine." This Act lay side by side with the Act of 1781 and did not repeal it. In this case, the proprietors of the theatre were granted a licence, subject to the condition that they should not open on Sundays, Christmas Day and Good Friday. Before this licence was issued the proprietors applied for a licence to open on Sundays. On the hearing of the application, counsel were heard and witnesses examined in support thereof and in opposition thereto. Thereafter the Council intimated that they would raise no objection to the opening of the theatre on prohibited days, subject to the payment by the proprietors of a certain charge. This, in effect, was to grant permission so far as the Council was concerned and was illegal. *Certiorari* is the proper means of quashing their action. This writ will issue when judicial functions have been exercised in the sense that a decision was made on evidence between a proposal and an opposition as was done in this case.

GREER and SLESSER, L.JJ., concurred.

COUNSEL: *Sir Boyd Merriman*, K.C., *Pritt*, K.C., and *A. F. Englebach* for the appellants; *Montgomery*, K.C., and *Sidney Lamb* for the respondents.

SOLICITORS: *Solicitor for the London County Council; Messrs. Rutland & Crauford.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

## High Court—King's Bench Division.

**Carmarthen Revenue Officer** *v.* **United Dairies (Wholesale) Limited.**

Lord Hewart, C.J., Avory and MacKinnon, JJ. 21st January.

DE-RATING—DAIRY PRODUCE—MILK AND CHEESE FACTORY—INDUSTRIAL HEREDITAMENT—RATING AND VALUATION (APPORTIONMENT) ACT, 1928 (18 & 19 Geo. 5, c. 44), s. 3 (1).

This was an appeal by the Revenue Officer for the Carmarthen Assessment Area against a decision of the Carmarthen Assessment Committee that a hereditament known as Milk Factory, Whitland, Carmarthen, and being a milk and cheese factory of which the respondents, United Dairies (Wholesale), Ltd., were the occupiers, was an "industrial hereditament" within the Act of 1928 and was entitled to be placed on the special list and de-rated.

According to the case stated, the respondents carried on business in London and elsewhere as wholesale dairymen. They also carried on the business of treating milk for sale, cheese-making, milk powdering, and milk condensing. The premises which were the subject of the present appeal were occupied and used for the purpose of carrying out the processes of pasteurising and cleaning milk and of cheese-making. Special premises had to be built and equipped for carrying out the processes. The hereditament was registered under the Factory and Workshop Acts. The net annual value of the hereditament was £134, which had been apportioned as to £100 industrial and £34 non-industrial. The questions for the opinion of the court were: (1) whether the hereditament should not be excluded from the special list on the ground that it was not an industrial hereditament; (2) whether, having regard to s. 3 (1) of the Act of 1928, the hereditament should not be excluded from the special list on the ground that it was primarily occupied and used for one or other of the following purposes or for a combination of such purposes, namely: (*a*) The purposes of distributive wholesale business; (*b*) the purposes of pasteurising and cleaning milk, which were not the purposes of a factory or workshop within the meaning of the section; (3) whether, on the true construction of s. 3 of the Act, the hereditament, though occupied as a factory or workshop, was not primarily occupied or used for other purposes, not being the purposes of a factory or workshop by reason of the fact that the occupation and user of the hereditament was solely in connexion with or ancillary to the trade or business of distributive wholesale milkmen or dairymen which were not the purposes of a factory or workshop.

Lord HEWART, C.J., said that the real question was whether the hereditament could be described as an industrial hereditament within the Act. It was important to remember the far-reaching words of Lord Buckmaster in *Moon* v. *London County Council*, 47 T.L.R., at p. 156: "It appears to me that running through the statute is the idea of exempting particular premises described throughout as hereditaments, and that it is the use to which those premises are put that must be considered and not what may be ultimately done with whatever commodity they create." In the present case there was a process which, in his (his Lordship's) opinion, was an industrial process. The object of pasteurisation was to produce such a change in the characteristics of the milk as to adapt it for a sale which was not immediate sale. The appeal would be dismissed.

AVORY and MACKINNON, JJ., agreed.

COUNSEL: *Wilfrid Lewis* and *Colin Pearson*, for the Revenue Officer; *Lord Halsbury*, K.C., and *J. M. Buckley*, for the respondents.

SOLICITORS: *Treasury Solicitor; S. L. MacAndrew.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

## Probate, Divorce and Admiralty Division.

**Abbott** *v.* **Abbott.** Langton, J. 12th December, 1930.

DIVORCE—PRACTICE—ALIMONY *pendente lite*—ORDER BY CONSENT—MEANING OF WORDS "WITHOUT PREJUDICE" AND "LIBERTY TO APPLY"—POWER TO "VARY OR MODIFY ORDERS" UNDER JUDICATURE (CONSOLIDATION) ACT, 1925, 15 & 16 Geo. 5, c. 49, s. 196, confined to suits for restitution.

By this summons adjourned into court, the husband appealed against the refusal of the Registrar to review a consent order made on 11th March, 1930, upon the wife's petition for alimony *pendente lite*. The terms of the order were as follows: "Upon hearing the solicitors for the petitioner and respondent and by consent, I do order that George Henry Abbott, the respondent, pay or cause to be paid to Mildred Kathleen Abbott, the petitioner, alimony *pendente lite* at and after the rate of £2,500 per annum, free of all tax, to commence from the date of the serving of the petition in this cause, to wit, the 10th March, 1930, and to be payable

by weekly instalments of £48 1s. 7d. Without prejudice. Liberty to apply." The terms of this order were carried out by the husband until October, 1930, when he took steps to have the order reviewed by the registrar under the liberty to apply, with the object of showing that his average gross income for the past three years was £4,138 17s. 7d., and that in the circumstances the rate of alimony payable to the wife was excessive, and should be reduced. The registrar held that there was no power to vary the consent order.

LANGTON, J. (in a written judgment, read in his absence by Lord Merrivale, P.), said that the words "without prejudice in his (his lordship's) view, meant that the facts or figures stated in the order were not to be taken in any subsequent proceedings as binding upon the parties or as representing conclusions arrived at by any process of inquiry. "Liberty to apply" meant what it said, that leave was reserved to both parties to make any application concerning any part of the order. Reference had been made to s. 196 of the Judicature (Consolidation) Act, 1925. That had no application in the present case, but only applied to orders for periodical payments following upon petition for restitution of conjugal rights. The appeal would be allowed and the matter remitted to the registrar.

COUNSEL: *Bayford*, K.C., and *H. R. Barker*, for the petitioner; *Sir Patrick Hastings*, K.C., and *Tyndale*, for the respondent.

SOLICITORS: *Kenneth Brown, Baker, Baker; Reynolds, Sons & Gorst.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

**Gordon** *v.* **Gordon.** Lord Merrivale, P. 3rd February.

DIVORCE—WIFE'S PETITION FOR RESTITUTION OF CONJUGAL RIGHTS — HUSBAND'S ANSWER ALLEGING REASONABLE CAUSE—WIFE'S EXTRAVAGANT HABITS—TEST OF CONDUCT IMPERILLING RESPONDENT'S HOME OR LIVELIHOOD.

This was a wife's petition for restitution of conjugal rights, which was opposed by the husband on the ground that he had just cause for refusing to live with her by reason of her habitual extravagance. The parties were married at Calcutta in 1912 and there was one child of the marriage, a daughter born in 1916. There was alleged to be a matrimonial home in England in Wiltshire. In 1921 the petitioner returned to England with the child, the respondent remaining in India of necessity owing to the nature of his business of tea merchant. In April, 1929, the respondent returned to England on leave but refused to live with the petitioner. In May, 1929, the petitioner wrote to the respondent asking him to return to her but he declined to do so. The facts are more fully reported in the note of interlocutory proceedings, 74 SOL. J. 59, in which the wife petitioner was unsuccessful on an application to strike out the answer on the ground that it disclosed no defence, or, alternatively, was unnecessary, embarrassing, scandalous and irrelevant.

Lord MERRIVALE, P., in the course of giving judgment, said that the respondent had had very hard measure dealt out to him. He had exerted himself to provide for his future on retiring, and he had been harassed by the habitual want of control and the reckless behaviour of the petitioner in financial affairs. If the resultant discomfort, mortification, chagrin and vexation were grounds for refusing the wife's claim, there was a formidable case. He (his lordship) found that the allegation that the respondent's partners had said that they would refuse to allow him to remain a member of the firm if his wife came to live with him in India was not established. There was no reason to suppose that if the petitioner behaved herself with a proper sense of the obligations of a wife, with the control of expenditure in the husband's hands, that her presence in the home would necessarily prejudice the business of the firm. What had happened was that the respondent's partners had naturally sympathised with him. The petitioner had been living in this country against her will and had become involved in debt, a good deal of which had been reckless. She desired to return to India, but was provided with an allowance while in this country. It was not as though she had been in Calcutta and had put the home in peril there. The action of the petitioner, though blameworthy, had not been such as to put the respondent's livelihood or home in peril. If the parties had a matrimonial home in this country or in India, he (his lordship) did not find that the respondent would be unable to control his wife or that she would be unwilling to be controlled. There had been efforts on her part to limit her expenditure . . . There would therefore be a decree of restitution of conjugal rights, with costs.

COUNSEL: *Bayford*, K.C., and *S. Laskey* for the petitioner; *Willis*, K.C., and *T. Bucknill* for the respondent.

SOLICITORS: *Kenneth Brown, Baker, Baker; Andrew Wood, Purves & Sutton.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

# Obituary.

## SIR L. WORTHINGTON-EVANS.

We regret to announce the death of The Right Hon. Sir Laming Worthington-Evans, Bart., M.P., on Saturday, the 14th inst., at his residence in Eaton Place, S.W., at the age of sixty-two. He had recently suffered considerable ill-health, but his speech in the House last week gave little indication of failing strength.

Sir Laming was educated at Eastbourne College, and became articled to his father at the age of seventeen. After passing his final examination with honours and gaining the Mackrell prize, he went into the family business, and ultimately became head of the firm of Worthington-Evans, Dauney & Co. He specialised particularly in company work and was responsible wholly or in part for several works on that subject. In 1905 he was appointed a member of the Board of Trade Committee for the reform of the company law.

He retired from practice in 1910 and entered Parliament in the same year, sitting as member for the Colchester Division from that date until 1929, when he was returned for St. George's, Hanover Square, by a large majority.

He held innumerable Parliamentary offices, chief amongst which were Minister of Pensions in 1919, Secretary of State for War 1921-1922, Postmaster-General in 1923, and again Secretary of State for War under Mr. Baldwin's second ministry. He was created a baronet in November, 1916, when he took the additional name of Worthington, and G.B.E. in 1922. He is succeeded in the baronetcy by his son, William Shirley Worthington-Evans, who is a barrister.

## MR. D. M. DODD.

Mr. David Mainland Dodd, solicitor, of Newcastle-upon-Tyne, died recently at his home in Windsor Terrace, Jesmond, in his seventy-second year. He was admitted in 1882, became Under-Sheriff in 1891, and was appointed to the Newcastle Magisterial Bench in July, 1927.

## MR. G. L. LEPPER.

Mr. George Longley Lepper, solicitor, of Mark-lane, E.C.3, collapsed recently in Lombard-street and died later in hospital from a heart attack. Mr. Lepper, who was admitted in 1876, was seventy-six years of age.

## MR. C. H. TRICKETT.

Mr. Cedric Hallam Trickett, solicitor, of Sheffield, died recently at the early age of forty-two. He was admitted in 1912, and became a partner in the firm of Messrs. Stabler, Kesteven & Co.

# Rules and Orders.

SUPREME COURT, ENGLAND.
PROCEDURE.

THE RULES OF THE SUPREME COURT (No. 1), 1931.

DATED FEBRUARY 2, 1931.

We, the Rule Committee of the Supreme Court, hereby make the following Rules :—

1. The following Rule shall be inserted after Rule 21 of Order LIIIA and shall stand as Rule 21A :—

"21A.—(1) The plaintiff in an action for infringement of a patent so soon as he becomes entitled to give notice of trial shall and the defendant in such an action if the plaintiff makes default under this Rule for 14 days may apply by notice under Rule 5 of Order XXX for directions as to the mode of trial. Such application may be dealt with in Chambers or in Court as the Judge shall think fit. Upon any such application such directions for the delivery of further pleadings or particulars or statements in the nature of further pleadings or particulars and for the making of experiments tests or inspections for the purposes of the trial and for obtaining reports and for the hearing of any preliminary question that may arise and otherwise may be given as the Court or the Judge shall think necessary or expedient for the purposes of (*a*) determining any question of construction which may arise on the specification (*b*) defining limiting or directing the issues of fact to be tried (*c*) restricting the number of witnesses to be called at the trial on any particular issue and (*d*) otherwise securing that the trial shall be conducted consistently with adequate hearing in the most expeditious manner. No action for infringement of a patent shall be set down for trial unless and until an application under this Rule has been made and disposed of.

(2) The like provisions shall apply *mutatis mutandis* to petitions for the revocation of a patent, and no such petition shall be heard unless and until an application under this Rule has been made and disposed of."

2. In paragraph (*c*) of Rule 5 of Order LIIIB the expression "section 56" shall be substituted for the expression "section 55."

3. In paragraph (1) of Rule 1 of Order LIIID the words "or for a new lease in lieu of compensation for goodwill" shall be omitted.

4. These Rules may be cited as the Rules of the Supreme Court (No. 1), 1931, and shall come into operation on the 1st day of April, 1931, and the Rules of the Supreme Court, 1883, shall have effect as amended by these Rules.

Dated the 2nd day of February, 1931.

*Sankey*, C.
*Hanworth*, M.R.
*Merrivale*, P.
*P. Ogden Lawrence*, L.J.
*F. H. Maugham*, J.
*T. R. Hughes*,
*A. W. Cockburn*.
*C. H. Morton*.
*Royer Gregory*.

SUPREME COURT, ENGLAND.
PROCEDURE: MATRIMONIAL CAUSES RULES.

THE MATRIMONIAL CAUSES (AMENDMENT) RULES, 1931.

DATED 2ND FEBRUARY, 1931.

We the Rule Committee of the Supreme Court hereby make the following rules :—

1. The following Rule shall be inserted after Rule 34 of the Matrimonial Causes Rules, 1924,(*) and shall stand as Rule 34A :—

"34A. Where a party at whose instance a cause has been tried or heard is represented by a solicitor, and any part of the court fee payable in respect of the decree (Fee No. 29) is not paid, the Judge may, on the application of the official solicitor by summons, and upon a report signed by the Registrar stating the amount of the unpaid fee, order that party's solicitor personally to pay the said amount and the official solicitor's costs of the application."

2. These Rules may be cited as the Matrimonial Causes (Amendment) Rules, 1931, and the Matrimonial Causes Rules, 1924, as amended,(†) shall have effect as further amended by these Rules.

Dated the 2nd day of February, 1931.

*Sankey*, C.
*Hanworth*, M.R.
*Merrivale*, P.
*P. Ogden Lawrence*, L.J.
*F. H. Maugham*, J.
*T. R. Hughes*.
*A. W. Cockburn*.
*C. H. Morton*.
*Roger Gregory*.

* S.R. & O. 1924 (No. 126) p. 1691. † *See* S.R. & O. 1925 (No. 74) p. 1536.

COMPANY, ENGLAND.
COMPANIES (WINDING-UP).

THE COMPANIES (WINDING-UP) AMENDMENT RULES, 1931, DATED FEBRUARY 10TH, 1931, MADE PURSUANT TO THE COMPANIES ACT, 1929 (19 & 20 GEO. 5, C. 23).

1. In Form No. 59 in the Appendix to the Companies (Winding-Up) Rules, 1929, (*) the words "Signature of Commissioner or Officer administering oath" shall be omitted.

2. These Rules may be cited as the Companies (Winding-Up) Amendment Rules, 1931, and shall come into operation on the 14th day of April, 1931, and the Companies (Winding-Up) Rules, 1929, as amended,(†) shall have effect as further amended by these Rules.

Dated the 10th day of February, 1931.

*Sankey*, C.

I concur,

*William Graham*,
President of the Board of Trade.

* S.R. & O. 1929 (No. 612) p. 208. † *See* S.R. & O. 1929 (No. 1177) p. 349.

# Societies.

## The City of London Solicitors Company.

ANNUAL DINNER.

The annual dinner of the company was held on Friday, the 13th February, at the Merchant Taylors' Hall, Threadneedle-street, the Master (F. M. Guedalla, Esq.) presiding. There were many distinguished guests present, including: The Right Hon. The Lord Mayor, The Master of the Rolls, His Excellency Baron E. K. Palmstierna, G.C.V.O., The Swedish Minister, The Right Hon. Viscount Hailsham, Sir Roger Gregory, President of The Law Society, The Hon. Mr. Justice Bateson, The Right Hon. Sir Leslie Scott, K.C., Sir Thomas Hughes, K.C., Chairman of The General Council of the Bar, His Honour Judge Cusack, K.C., Edwin Thompson, Esq., Lord Mayor of Liverpool, Sir Claud Schuster, G.C.B., C.V.O., K.C., J. E. Parry, Esq., Chairman of the "Baltic," Sir Gilbert Garnsey, K.B.E., Mr. Alderman and Sheriff Maurice Jenks, Mr. Sheriff D. George Collins, Herbert Guedalla, Esq., Alderman Sir William A. Waterlow, Bart., K.B.E., Sir Cecil L. Budd, K.B.E., Lieut.-Commander Hon. J. M. Kenworthy, R.N., M.P., Sir Ambrose Woodall, Stuart J. Bevan, Esq., K.C., J. H. Morgan, Esq., K.C., Digby Cotes-Preedy, Esq., K.C., T. Eastham, K.C., Clement Davies, Esq., K.C., M.P., D. N. Pritt, Esq., K.C., Commendatore Palliccia, O.B.E., M.C., The Right Hon. Earl of Effingham, William Graham, Esq., Master of the Merchant Taylors' Company, Walter Bentley, Esq., A. E. Whitfield, Esq., Dr. R. Graves, F. C. Watmough, Esq., A. S. Hicks, Esq., Colonel G. T. F. Leather, Sidney Pears, Esq., Thomas Pocklington, Esq., Reverend C. Egerton Chadwick, M.C., M.A., C.F., A. G. Prideaux, Esq., D. Rowland Thomas, Esq., W. Sidney Hoare, Esq., Kenelm Preedy, Esq., Walter N. Earle, Esq. (Secondary of London), etc. In addition to the Master, the following members of the court of the company were present: J. H. N. Armstrong, Esq., Senior Warden, R. S. Fraser, Esq., Junior Warden, E. J. Stannard, Esq., Sydney C. Scott, Esq., T. H. Wrensted, Esq., J. Montague Haslip, Esq., P. D. Botterell, Esq., C.B.E., H. D. P. Francis, Esq., M.C., T.D., Harry Knox, Esq., and G. L. F. McNair, Esq., Past Masters, M. C. Matthews, Esq., Hon. E. G. Eliot, E. G. Roscoe, Esq., Anthony Pickford, Esq. (City Solicitor), A. Hair, Esq., P. C. C. Francis, Esq., Past Warden, and A. T. Cummings, Esq., the Clerk.

The Lord Chancellor was not well enough to attend, but he had written to congratulate the solicitors on maintaining a high standard of professional conduct and contributing to the well-being of the law of the country during the last twenty-two years.

The Master proposed the toast of "The Right Hon. The Lord Mayor, the Sheriffs and the Corporation of the City of London," the response being made by the Lord Mayor. In his reply he said that the City of London, which had been the mouthpiece of the nation for many centuries, was the home of law, its opinion being greatly valued in legal administration and in parliamentary matters.

Mr. J. H. N. Armstrong, the Senior Warden, proposed the "Bench and Bar," Sir Thomas Hughes, K.C., replying for the Bar and Lord Hanworth, the Master of the Rolls, for His Majesty's judges. Lord Hanworth said that the independence of the Bench helped to conserve the stability of the nation, our law and its administration being the envy of other countries.

The toast of "the Visitors" was proposed by Mr. R. S. Fraser, the Junior Warden.

In replying to this toast Sir Roger Gregory, the President of The Law Society, said that he was very pleased to take the opportunity of expressing the gratitude of the Council of The Law Society for all the help and support that they receive from the company. They especially appreciated the trouble that the company had taken in expressing their opinion upon the subject of the pending legislation.

Sir Leslie Scott, K.C., also replying, said there was a tendency to give judicial authority to Government departments, and he wondered whether that was due to the same cause which had led to a great deal of unprofessional arbitration in the city and the tendency to settle disputes without bringing them before the courts. He suggested that both branches of the profession should consider the best way to meet the needs of modern commerce with regard to cost, expedition, and the avoidance of complaints. Now was the time, he said, when they should examine their machine, and try to afford suitors an easier method of resort to the courts without a prospect of appeal. He would rather see the judges themselves unemployed than that the majority of suitors should not know when their case was going to come on.

Lord Hailsham proposed "The City of London Solicitors' Company, coupled with the health of the Master and Wardens." In congratulating the members on the active assistance which they rendered to poor persons at the courts, he suggested that young solicitors might go a little further and render advice to the poor. A rankling sense of injustice was felt by the poorer sections of the community not so much that they had a real case which could not be heard, but because they did not know when they had no case.

The Master, in responding, said that the company wished to join forces with the City Corporation and The Law Society in trying to reform the law and to do justice for the benefit of the whole community.

## Solicitors' Benevolent Association.

The monthly meeting of the Directors of this Association was held at 60, Carey-street, London, on the 11th inst., Mr. W. A. Coleman (Leamington) in the chair. The other Directors present were: Sir A. Norman Hill, Bart., Sir E. F. Knapp-Fisher, Sir Reginald W. Poole, and Messrs. T. G. Cowan, T. S. Curtis, A. G. Gibson, O. J. Humbert, C. G. May, H. A. H. Newington, L. F. Paris (Southampton), and A. B. Urmston (Maidstone). £533 was distributed in grants of relief; twenty-one new members were admitted; and other general business transacted.

## Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Hall on Tuesday, 10th February, 1931 (Chairman, Mr. Gerald Thesiger), the subject for debate was: "That this House deplores the increasing commercialisation of Sunday." Mr. Godfrey Roberts opened in the affirmative. Mr. Melford Stevenson opened in the negative. The following members also spoke: Messrs. E. M. Fletcher, Meilicke, J. J. Chadwick, K. Nation-Dixon, A. L. Ungoed-Thomas, T. M. Jessup, L. J. Frost, H. J. Baxter, A. E. Johnson, J. M. Buckley, Barry O'Brien and R. L. Mitchell. The opener having replied, the motion was carried by six votes. There were twenty-seven members and four visitors present.

## Birmingham Law Society.

The annual general meeting of the society will be held at the Library, on Wednesday, the 25th February, at 3 o'clock in the afternoon, to receive the report of the committee for 1930, and the treasurer's accounts for the same period; to elect auditors for 1931; to fill vacancies on the committee; and for the transaction of other business.

The retiring members of the committee are: Messrs. A. H. Coley, E. Evershed, C. K. Langley, G. A. C. Pettitt, C. H. Saunders, C. E. Barker, F. P. Evers, and R. R. C. Yates, of whom the three last named are, under the articles of association of the society, ineligible for re-election for the ensuing twelve months.

## The Social and Political Education League.

The Right Hon. Sir Leslie Scott, K.C., will deliver his Presidential Address on "The Rule of Law and Present Constitutional Practice," to the Social and Political Education League, at University College, Gower Street, W.C.1, on Monday, March 9th, at 8.30, p.m. Tickets will be forwarded on application to Mr. J. W. Baggally, 4, Stone-buildings, Lincoln's Inn, W.C.2.

# Legal Notes and News.

## Wills and Bequests.

Mr. Henry Charles Squires, solicitor, of Cambridge, left £4,366, with net personalty £2,119.

Mr. William J. Evans, solicitor, of Ely, left £106,956, with net personalty £101,195. He gave the Manor of Stuntney and property at Ely to his son, Mr. Ernest Robert Evans, solicitor, also of Ely, £1,000, the use of his residence and furniture, and the income from £10,000 to his wife, £10,000 in trust for each of his three daughters, and the residue of the property to his children.

Mr. Benjamin H. Vores, solicitor, of Norfolk, left £19,437, with net personalty £10,659.

Mr. Henry James Cording, of Buckhurst Hill, Essex, late of Nickinson and Co., solicitors, of Bedford-square, W.C., left £1,268 with net personalty £638.

### THE STOCK EXCHANGE OFFICIAL INTELLIGENCE.

The 1931 edition of *The Stock Exchange Official Intelligence* will be published on the 25th March. This will be the fiftieth annual issue of this official work.

### SUITORS' ACCOUNTS.

We are informed that an account of money and securities vested in and dealt with by the Accountant-General of the Supreme Court for the year ended 28th February, 1930, is contained in a White Paper (46 Stationery Office; price 2d.). The Comptroller and Auditor-General reports that on 28th February, 1930, the liability of the Consolidated Fund for suitors' cash remained at £1,632,134, although this liability was reduced to an apparent figure of £1,067,408 by a surplus of £564,726 arising from the accumulation of moneys placed with the National Debt Commissioners for investment. The nominal value of the Government and other sterling securities standing to the credit of the accounts of suitors amounted to £52,088,424. There were 20,751 suitors' accounts open in the books of the Accountant-General on 28th February, 1930.

### BAR COUNCIL ELECTION.

The following twenty-four candidates have been elected to fill the vacancies upon the Bar Council: Sir Thomas Hughes, K.C., Mr. E. A. Mitchell-Innes, C.B.E., K.C., Sir Herbert Cunliffe, K.C., Mr. A. T. Miller, K.C., Mr. J. W. Manning, K.C., Hon. Sir Reginald Coventry, K.C., Mr. J. E. Singleton, K.C., Mr. J. D. Cassels, K.C., Mr. H. B. Vaisey, K.C., Mr. Charles Doughty, K.C., Mr. H. Du Parcq, K.C., Mr. St. John G. Micklethwait, K.C., Mr. J. W. Willoughby Jardine, K.C., Mr. Walter Hedley, K.C., Mr. D. B. Somervell, K.C., Mr. Alfred Adams, Mr. H. T. Wright, Mr. J. W. M. Holmes, Mr. C. J. Parton, Mr. W. Blake Odgers, Mr. R. T. Monier-Williams, Mr. Charles E. Harman, Mr. W. S. Morrison, M.P., and Mr. A. L. Stevenson.

### BAR "GUEST NIGHT."

The Treasurer and Benchers of the Inner Temple have decided that in future one night in each dining term shall be set apart as a barristers' "guest night," when each member will have the privilege of nominating a guest.

At first the number of guests is to be limited to a dozen, and the first twelve proposed will have precedence. They must not be either members of the solicitor profession, or students, or any person under twenty-one years of age.

It is understood that the first "guest night" will be on a date not yet fixed in the next dining term, that is, between the 14th April and the 11th May.

### AMENDMENT TO STRAITS SETTLEMENTS COURTS ORDINANCE.

A Bill introduced into the Legislative Council of the Straits Settlements makes certain very important changes in the Courts Ordinance. As the law stood before, for example, before a member of a legal firm could appear in court all members of that firm had to take out certificates to practise. It was proposed in the amendments, however, that where an advocate of the Federated Malay States is retained to appear as counsel in the Colony by a local firm, only such advocate and such partners as reside in the Colony need hold certificates.

A UNIVERSAL APPEAL.

To Lawyers: For a Postcard or a Guinea for a Model Form of Bequest to the Hospital for Epilepsy and Paralysis, Maida Vale, W.9.

### THE OUTBREAK OF PARATYPHOID IN ESSEX.

The total number of known cases of paratyphoid occurring in Essex between the 1st and 14th inst., has been 172, the districts mainly affected being Epping Urban, Epping Rural, Loughton Urban and the Borough of Walthamstow. The disease in all cases has been enteric (or typhoid) fever of the type known as Paratyphoid B. The illness in many cases has been severe but the fatality has been relatively low and only four deaths have occurred up to the present time. By arrangement with the London County Council, the majority of the patients have been treated in that Council's infectious diseases hospitals, but others have been admitted to the London Fever Hospital, the Connaught Hospital at Walthamstow and the Ilford Isolation Hospital.

Enquiries made by Dr. W. V. Shaw, a Medical Officer of the Ministry, in consultation with the Medical Officers of Health of the county and of the districts concerned, appear to have shown that the origin of the epidemic was the infection of a particular milk supply at a dairy farm in the Epping Rural District. The infection seems to have been introduced by one of the employees on the farm who, unknown to himself, was suffering from a mild attack of paratyphoid while at work and handling the milk before its distribution. For several days the milk thus infected was consumed by a considerable number of persons in surrounding districts, some of whom have suffered from the disease.

At the farm in question all the employees have been examined and all those suspected of possibly carrying infection, including the man considered to have been the source of infection, have been removed to hospital and their place at the farm taken by other workers kept under close medical supervision. The distribution of milk from the farm was discontinued for the time necessary for the premises, milk utensils, etc., to be thoroughly cleansed and disinfected to the satisfaction of the Medical Officer of Health, and there is now no reason to apprehend further infection of the milk at this farm.

Ministry of Health, Whitehall, S.W.1.
17th February.

## Insurance Notes.

### SUN LIFE ASSURANCE COMPANY OF CANADA.

The Sun Life Assurance Company of Canada report that the year which ended on 31st December, 1930, was again a satisfactory one. The new assurances effected amounted to £145,002,492, an increase of over £10,526,000, bringing the total assurances in force to £588,431,831. The premium income was £24,714,636, an increase of £3,048,310 over the previous year. This brings the total income for 1930 up to £38,965,265. The assets show a gain of over £4,219,000 and now amount to £120,972,664. Undivided surplus, including contingency reserve, is £7,506,714. Annuity purchase money received amounted to £4,254,609.

The volume of new assurances issued is the largest in the history of the Company.

## Court Papers.

### Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

| DATE | EMERGENCY ROTA | APPEAL COURT No. 1. | GROUP I. MR. JUSTICE EVE. Witness. Part I. | MR. JUSTICE MAUGHAM. Non-Witness |
|---|---|---|---|---|
| M'nd'y Feb. 23 | Mr. Hicks Beach | Mr. Ritchie | Mr.*Hicks Beach | Mr. More |
| Tuesday .. 24 | Blaker | Andrews | Andrews | Hicks Beach |
| Wednesday. 25 | More | Jolly | *More | Andrews |
| Thursday . 26 | Ritchie | Hicks Beach | Hicks Beach | More |
| Friday .... 27 | Andrews | Blaker | *Andrews | Hicks Beach |
| Saturday .. 28 | Jolly | More | More | Andrews |

| | GROUP I. MR. JUSTICE BENNETT. Witness. Part II. | MR. JUSTICE CLAUSON. Non-Witness. | GROUP II. MR. JUSTICE LUXMOORE. Witness. Part II. | MR. JUSTICE FARWELL. Witness. Part I. |
|---|---|---|---|---|
| M'nd'y Feb. 23 | Mr.*Andrews | Mr. Jolly | Mr.*Blaker | Mr. Ritchie |
| Tuesday .. 24 | *More | Ritchie | *Jolly | *Blaker |
| Wednesday. 25 | *Hicks Beach | Blaker | *Ritchie | Jolly |
| Thursday . 26 | Andrews | Jolly | Blaker | *Ritchie |
| Friday .... 27 | More | Ritchie | *Jolly | Blaker |
| Saturday .. 28 | Hicks Beach | Blaker | Ritchie | Jolly |

*The Registrar will be in Chambers on these days, and also on the days when the Courts are not sitting.

The EASTER VACATION will commence on Friday, the 3rd day of April, 1931, and terminate on Tuesday, the 7th day of April, 1931, inclusive.

**VALUATIONS FOR INSURANCE.** It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is frequently very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality. 'Phone: Temple Bar 1181-2.

## Stock Exchange Prices of certain Trustee Securities.

Bank Rate (1st May 1930) 3%. Next London Stock Exchange Settlement Thursday, 5th March, 1931.

| | Middle Price 18 Feb. 1931. | Flat Interest Yield. | | | Approximate Yield with redemption | | |
|---|---|---|---|---|---|---|---|
| **English Government Securities.** | | £ | s. | d. | £ | s. | d. |
| Consols 4% 1957 or after | 87 | 4 | 12 | 0 | — | | |
| Consols 2½% | 55 | 4 | 10 | 11 | — | | |
| War Loan 5% 1929-47 | 102⅜ | 4 | 17 | 4 | — | | |
| War Loan 4½% 1925-45 | 100⅜ | 4 | 9 | 7 | 4 | 9 | 0 |
| Funding 4% Loan 1960-90 | 90½ | 4 | 8 | 5 | 4 | 9 | 0 |
| Victory 4% Loan (Available for Estate Duty at par) Average life 35 years | 94⅛ | 4 | 4 | 8 | 4 | 6 | 0 |
| Conversion 5% Loan 1944-64 | 104 | 4 | 16 | 2 | 4 | 15 | 0 |
| Conversion 4½% Loan 1961 | 99½ | 4 | 10 | 6 | 4 | 11 | 0 |
| Conversion 3½% Loan 1961 | 77⅛ | 4 | 10 | 4 | — | | |
| Local Loans 3% Stock 1912 or after | 64⅛ | 4 | 13 | 0 | — | | |
| Bank Stock | 267½ | 4 | 9 | 9 | — | | |
| India 4½% 1950-55 | 78⅛ | 5 | 14 | 8 | 6 | 4 | 9 |
| India 3½% | 56⅛ | 6 | 3 | 11 | — | | |
| India 3% | 47½ | 6 | 6 | 4 | — | | |
| Sudan 4½% 1939-73 | 98 | 4 | 11 | 10 | 4 | 12 | 3 |
| Sudan 4% 1974 | 87 | 4 | 12 | 0 | 4 | 14 | 0 |
| Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.) | 86½ | 3 | 9 | 4 | 3 | 18 | 0 |
| **Colonial Securities.** | | | | | | | |
| Canada 3% 1938 | 91 | 3 | 5 | 11 | 4 | 8 | 6 |
| Cape of Good Hope 4% 1916-36 | 97 | 4 | 2 | 6 | 4 | 11 | 6 |
| Cape of Good Hope 3½% 1929-49 | 84 | 4 | 3 | 4 | 4 | 16 | 6 |
| Ceylon 5% 1960-70 | 102 | 4 | 18 | 0 | 4 | 17 | 6 |
| *Commonwealth of Australia 5% 1945-75 | 65 | 7 | 13 | 10 | 8 | 2 | 0 |
| Gold Coast 4½% 1956 | 98 | 4 | 11 | 10 | 4 | 12 | 6 |
| Jamaica 4½% 1941-71 | 98 | 4 | 11 | 10 | 4 | 12 | 0 |
| Natal 4% 1937 | 97 | 4 | 2 | 6 | 4 | 11 | 9 |
| *New South Wales 4½% 1935-1945 | 60 | 7 | 10 | 0 | 9 | 0 | 0 |
| *New South Wales 5% 1945-65 | 55 | 9 | 1 | 10 | 9 | 14 | 6 |
| New Zealand 4½% 1945 | 85½xd | 5 | 5 | 3 | 6 | 0 | 0 |
| New Zealand 5% 1946 | 90½ | 5 | 10 | 6 | 6 | 0 | 0 |
| Nigeria 5% 1950-60 | 103 | 4 | 17 | 1 | 4 | 16 | 0 |
| *Queensland 5% 1940-60 | 63 | 7 | 18 | 8 | 8 | 15 | 0 |
| South Africa 5% 1945-75 | 99½ | 5 | 0 | 6 | 5 | 1 | 0 |
| *South Australia 5% 1945-75 | 65 | 7 | 13 | 10 | 7 | 17 | 6 |
| *Tasmania 5% 1945-75 | 71 | 7 | 0 | 10 | 7 | 3 | 0 |
| *Victoria 5% 1945-75 | 67 | 7 | 9 | 3 | 7 | 13 | 6 |
| *West Australia 5% 1945-75 | 65 | 7 | 13 | 10 | 8 | 0 | 0 |
| **Corporation Stocks.** | | | | | | | |
| Birmingham 3% on or after 1947 or at option of Corporation | 66 | 4 | 10 | 11 | — | | |
| Birmingham 5% 1946-56 | 104 | 4 | 16 | 2 | 4 | 14 | 6 |
| Cardiff 5% 1945-65 | 100 | 5 | 0 | 0 | 5 | 0 | 0 |
| Croydon 3% 1940-60 | 76 | 3 | 18 | 11 | 4 | 9 | 6 |
| Hastings 5% 1947-67 | 103 | 4 | 17 | 1 | 4 | 16 | 6 |
| Hull 3½% 1925-55 | 82 | 4 | 5 | 4 | — | | |
| Liverpool 3½% Redeemable by agreement with holders or by purchase | 77 | 4 | 10 | 11 | — | | |
| London City 2¾% Consolidated Stock after 1920 at option of Corporation | 57xd | 4 | 7 | 9 | — | | |
| London City 3% Consolidated Stock after 1920 at option of Corporation | 65xd | 4 | 12 | 4 | — | | |
| Metropolitan Water Board 3% "A" 1963-2003 | 67 | 4 | 9 | 7 | — | | |
| Do. do. 3% "B" 1934-2003 | 68xd | 4 | 8 | 3 | — | | |
| Middlesex C.C. 3⅛% 1927-47 | 86 | 4 | 1 | 5 | 4 | 14 | 6 |
| Newcastle 3½% Irredeemable | 76 | 4 | 12 | 1 | — | | |
| Nottingham 3% Irredeemable | 66 | 4 | 10 | 11 | — | | |
| Stockton 5% 1946-66 | 103 | 4 | 17 | 1 | 4 | 16 | 6 |
| Wolverhampton 5% 1946-56 | 104 | 4 | 16 | 2 | 4 | 14 | 6 |
| **English Railway Prior Charges.** | | | | | | | |
| Gt. Western Rly. 4% Debenture | 83½ | 4 | 15 | 10 | — | | |
| Gt. Western Railway 5% Rent Charge | 100⅛ | 4 | 19 | 6 | — | | |
| Gt. Western Rly. 5% Preference | 93½ | 5 | 6 | 11 | — | | |
| L. & N.E. Rly. 4% Debenture | 72½ | 5 | 10 | 4 | — | | |
| L. & N.E. Rly. 4% 1st Guaranteed | 65½xd | 6 | 2 | 2 | — | | |
| L. & N.E. Rly. 4% 1st Preference | 49½ | 8 | 0 | 6 | — | | |
| L. Mid. & Scot. Rly. 4% Debenture | 74½ | 5 | 7 | 5 | — | | |
| L. Mid. & Scot. Rly. 4% Guaranteed | 73½ | 5 | 8 | 10 | — | | |
| L. Mid. & Scot. Rly. 4% Preference | 49½ | 8 | 0 | 6 | — | | |
| Southern Railway 4% Debenture | 78½ | 5 | 1 | 11 | — | | |
| Southern Railway 5% Guaranteed | 99½ | 5 | 0 | 9 | — | | |
| Southern Railway 5% Preference | 88½ | 5 | 13 | 0 | — | | |

*The prices of Australian stocks are nominal—dealings being now usually a matter of negotiation.

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FOR SALE.—"The Solicitors' Journal," Vols. 68 to 73, unbound. What offers?—Box 650, Solicitors' Journal, 29, Breams-buildings, E.C.4.

FOR SALE.—"The Solicitors' Journal," Vols. 65 to 73, cloth bound, perfect condition. What offers?—Box 589, Solicitors' Journal, 29 Breams-buildings, E.C.4.

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## INFORMATION REQUIRED.

**2s. per line.**

WILLIAM HILL, deceased.—Will any person having knowledge of any Will or Codicil made since 25th November, 1925, by the above deceased, late of "Redbrooke," Charing Heath, Kent, please communicate with Messrs. Batten & Co., 13, Victoria-street, Westminster, S.W.1?

RE MAJOR CHARLES W. HYLAND, decd.—Will any Solicitor or other person having knowledge of any Will made by the above-named deceased, who travelled on the Continent and had a residence in France, communicate with Box 666, Solicitors' Journal, 29, Breams-buildings, E.C.4.

WILL REBECCA, daughter of ALFRED and CLARA LONG, late of Colwyn Bay, COMMUNICATE with W. J. Gregory, Post Office-chambers, Colwyn Bay?

IF MISS MAJA FOELIX, formerly of 16, Poet's-road, Highbury, will COMMUNICATE either with Messrs. Kerwood & Co., of Church-road, Redditch, or Messrs. Long & Gardiner, of 8, Lincoln's Inn-fields, London, she will hear something to her advantage.

RE WILFRID MATHIESON, deceased, late of Sheepscombe (near Stroud), Gloucestershire. Any Solicitor or other person aware of the preparation or existence of a Will made by the above-named deceased is requested to communicate with Messrs. Rooks, Wales and Co., of 16, King-street, Cheapside, E.C.2, Solicitors.

RE WALTER TODD.—Will any person who can give INFORMATION as to the whereabouts of above please communicate with the undermentioned Solicitors? In 1906 Mr. Todd resided at Brackenhill Farm, Mirfield, Yorkshire, and in 1910 at 9, Blenheim-square, Leeds, and he is a son of the late John Todd, Farmer, late of Ferrybridge, Yorkshire.—Clough, Crabtree and Ineson, Solicitors, 1, Northgate, Cleckheaton (Yorks).

MRS. FLORA EMMA KATHERINE ST. GEORGE, decd.—Will anybody having knowledge of any Will or Codicil made since 9th February, 1907, by the above deceased, late of 5, Graham-street, Westminster, please communicate with Messrs. Dowsons & Sankey, of No 7., St. James's-place, S.W.1.

SOLICITOR enquiring some years ago for a Mr. WILLIAM MARS please write to C. DEAVIN, 71, Rotherhithe New-road, S.E.16.

MAJOR ANDREW HERBERT CALDECOTT (decd), late Royal Irish (now Ulster) Rifles.—Will any person having in his possession any Wills or draft Wills made by the above-named deceased please communicate immediately with Messrs. Biddle, Thorne, Welsford and Gait, Solicitors, 22, Aldermanbury, E.C.2, England.

RE Mrs. QUEENIE J. E. REEVES, deceased.—Will the Solicitor who acted for, or prepared a Will for Mrs. REEVES, late of 11, Hornley Place, Paddington, W.9, and who died June 24th, 1930, please communicate with Box 566, Solicitors' Journal, 29, Breams-buildings, E.C.4.


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